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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 74

SOUTHERN RAILWAY COMPANY, APPELLANT,

NORTH CAROLINA, ET AL.

No. 93

UNITED STATES, ET AL, APPELLANTS,

NORTH CAROLINA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

NO. 74 FILED FEBRUARY 12, 1943

NO. 93 FILED MARCH 18, 1943

PROBABLE JURISDICTION NOTED MAY 12, 1943

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 74

SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

NORTH CAROLINA, ET AL.

No. 93

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vs.

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**APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA**

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST 22, 1963

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[fol. 1]

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Civil Action File No. C-158-D-62

STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE DURHAM
CHAMBER OF COMMERCE, INCORPORATED; RESEARCH TRI-
ANGLE INSTITUTE; ERWIN MILLS, INC.; and MARY TRENT
SEMANS, Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMIS-
SION; and SOUTHERN RAILWAY COMPANY, Defendants.

COMPLAINT (as Amended)—Filed August 28, 1962

Plaintiffs, complaining of defendants, allege and say:

1.

Plaintiff, State of North Carolina, is one of the several sovereign states, interested in its citizens, users of the Southern Railroad, and interested in transportation generally which serves the State of North Carolina and interested particularly in the specific trains involved herein. Plaintiff, Duke University, is an educational institution located in the City of Durham, North Carolina; said plaintiff also owns and operates a large, general hospital, and some of said plaintiff's trustees, faculty members, students, doctors and hospital patients use the services of the Southern Railway Company and, in particular, the trains involved herein. Plaintiff, The Durham Chamber of Commerce, Incorporated, is a North Carolina corporation with its office located in the City of Durham, and, as Durham's Chamber of Commerce, is primarily dedicated to the welfare of the people of the County and City of Durham, many of whom use the services of the Southern Railway Company and the trains involved herein particularly. Plaintiff, Research Triangle Institute, is a North Carolina corporation created for the purpose of promoting research in the

Durham-Raleigh-Chapel Hill area, and its operations require the services of the Southern Railway Company and, in particular, the trains involved herein. Plaintiff, Erwin Mills, Inc., is a North Carolina corporation with offices [fol. 2] and manufacturing plants in the City of Durham and elsewhere and whose officers, directors, and employees use the services of the Southern Railway Company and, in particular, the trains involved herein. Plaintiff, Mary Trent Semans, is a citizen and resident of Durham County who, with her family, use the services of Southern Railway Company and the trains involved herein, in particular.

-2.

Defendant, Southern Railway Company, is a corporation chartered under the laws of the Commonwealth of Virginia and is a common carrier of freight and passengers in interstate commerce and also in intrastate commerce between points within the State of North Carolina, and in particular is the operator of two passenger trains between Greensboro and Goldsboro, North Carolina, known as Passenger Trains Nos. 13 and 16, relative to which this action is brought, affording the only rail passenger service between these two points.

3.

On July 8, 1959, defendant, Southern Railway Company (sometimes hereinafter referred to as "Southern" or "Railroad") filed its petition with the North Carolina Utilities Commission for an order permitting it permanently to discontinue Passenger Trains Nos. 13 and 16; that said passenger trains afford the only passenger service between these two points. From the State Utilities Commission's denial of its Petition, Southern appealed to the Wake County, North Carolina, Superior Court which affirmed and sustained the State Utilities Commission's order denying Southern's Petition. Southern then appealed to the North Carolina Supreme Court which affirmed the Superior Court and the State Utilities Commission, in a unanimous decision, rendered on the 3rd day of February, 1961. *State of North Carolina, ex rel. Utilities Commission, et al. v.*

Southern Railway Company, 254 N. C. 73, 118 S. E. 2d 21 (1961). No appeal was taken by Southern from this decision. Thereafter, on April 6, 1961, Southern filed a Petition [fol. 3] with the Interstate Commerce Commission (Finance Docket No. 21563) again seeking authority to discontinue the operation of Passenger Trains Nos. 13 and 16 pursuant to the provisions of Section 13a (2) of the Interstate Commerce Act (49 U.S.C. §13a (2)). After hearing before Examiner William J. Gibbons, said Examiner filed his report, recommending the issuance of an order allowing Southern's Petition. Exceptions to said report and recommended order were duly filed by all of the plaintiffs herein, and on July 2, 1962, Division 3 of the Interstate Commerce Commission issued an order adopting the rulings, findings and conclusions of the Examiner and authorizing, effective July 22, 1962, the discontinuance of said passenger trains. A true and correct copy of said final order is attached hereto and marked Exhibit "A". "That by Order bearing service date of July 20, 1962, the Interstate Commerce Commission postponed the effective date of the aforesaid Order, (Exhibit 'A'), pending the determination of the Petition requesting a determination of the presence of an issue of general transportation importance, a copy of said Order, identified as Exhibit 'B', being attached hereto and made a part hereof." Thereafter, on July 16, 1962, these plaintiffs, in contemplation of filing a Petition for reconsideration by the full Interstate Commerce Commission of said Division's order, filed a Petition requesting the Interstate Commerce Commission to determine that this case involved an issue of general transportation importance. This petition was denied by order of the Interstate Commerce Commission of August 8, 1962, the effective date of which was determined by the Commission to be August 23, 1962. A true and correct copy of said order is attached hereto and marked as Exhibit "B-1".

4.

This action is brought to annul, set aside and enjoin the operation and enforcement of said order of Division 3 of the Interstate Commerce Commission which has the effect of a final order of the Interstate Commerce Commission under the general rules of practice of said Commission.

[fol. 4] Southern Railway Trains Nos. 13 and 16 provide the last remaining rail passenger service between Greensboro and Goldsboro, North Carolina. They are operated over track and right-of-way leased to the Southern Railway Company by the North Carolina Railroad Company, a corporation, the majority of the stock of which is owned by the State of North Carolina, and a discontinuance by Southern Railway Company of the operation of these trains would constitute a breach of the lease agreement under which Southern is utilizing the track and right-of-way upon which these trains operate.

6.

Southern Railway Company is not a financially depressed railroad; to the contrary, it is financially sound, and its total, over-all operation, which includes the operation of Passenger Trains 13 and 16, produces a substantial and reasonable profit; that the elimination of said passenger trains will leave no rail passenger service of any kind between the cities of Greensboro and Goldsboro and the intervening cities and portion of the Piedmont section of North Carolina, including the cities of Burlington, Graham, Durham, Raleigh, Smithfield, and others; further, said discontinuance will leave the cities of Durham, Burlington, Graham, and surrounding areas totally and completely without any rail passenger service; Southern does not propose to discontinue its lucrative freight business through this important section of the State; it does not propose to abandon its total operations between Greensboro and Goldsboro, it simply proposes to abandon completely its rail passenger service constituting that portion of its operation which it deems to be unprofitable. Furthermore, it has for years discouraged the use of said passenger trains so as to make their operations less attractive to passengers and less profitable.

7.

That plaintiffs reasonably fear that, unless restrained, the defendant, Southern Railway Company, before notice can be issued and the hearing had, will cause immediate

and irreparable injury, loss and damage to these plaintiffs and to the members of the public generally which these [fol. 5] plaintiffs represent by discontinuing the operation of said passenger trains without further notice. Furthermore, unless the aforesaid order of the Interstate Commerce Commission be vacated and set aside and an injunction be issued restraining Southern from discontinuing the operation of said passenger trains, immediate and irreparable injury, loss and damage will occur to these plaintiffs and to the communities served by said passenger trains generally before notice can be issued and hearing had. In this connection, plaintiffs would show that the continued, uninterrupted operation of said passenger trains is necessary in the following particulars, among others, to wit:

(a) For the satisfactory performance, by military and governmental personnel, of their missions for the U. S. Army at the Office of Ordinance Research located at Duke University, Durham, North Carolina;

(b) In providing transportation for trustees, faculty members, students and other personnel connected with the schools and universities located in the area served by said passenger trains;

(c) In providing as a matter of medical necessity, transportation of patients from their homes to Duke Hospital, the physical condition of many of said patients being such that transportation by other means is impossible;

(d) In carrying on, and in assisting, the growth and development of vital scientific and engineering research services to foundations, corporations, and governmental agencies, by the various medical centers, The Research Triangle Institute, The Nuclear Research Center, The Computer Center, The University of North Carolina, and the many other research and study facilities in said area;

(e) In attracting to the area served by said passenger trains industrial development and in holding on to the many industries already established there, said industry being vital to the economy of North Carolina and to the welfare of her citizens.

[fol. 6] (f) To serve generally a large portion of the population of North Carolina residing in the area served by said passenger trains;

(g) And in other particulars not specifically enumerated herein.

8.

That, pursuant to the charter issued by the State of North Carolina to the North Carolina Railroad Company, a lease agreement was entered into on the 16th day of August, 1895, between said North Carolina Railroad Company and Southern Railway Company, defendant herein; that a copy of said lease agreement, identified as Exhibit "C", is attached hereto and, by reference, made a part hereof; that, viewed in its entirety and from its four corners, and in the light of the circumstances existing and surrounding the parties at the time of its execution, said lease agreement imposes upon defendant, Railroad, the obligation to continue the operation of the passenger trains involved in this action; that, further, any discontinuance of said trains would constitute a breach of the provisions of said lease agreement by the Railroad.

9.

That the order of the Interstate Commerce Commission purporting to authorize Southern Railway Company to discontinue the operation of its Passenger Trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina, is void and unenforceable for further reasons, among others, in that:

(a) Section 13a (2) of the Interstate Commerce Act (49 U.S.C.A. §13a (2)), under which the Interstate Commerce Commission purported to allow Southern's petition, is unconstitutional on its face and in its application to the facts involved herein in that it violates, among other articles, Article I, Sections 8 and 9, of the United States Constitution, in that it is an attempt by the Congress to confer upon said Interstate Commerce Commission jurisdiction over intrastate commerce, whereas the United States Con-

[fol. 7] stitution confers upon Congress the power only to regulate commerce among the several states (interstate commerce), and the aforesaid statute purports to confer upon Congress the power to delegate jurisdiction to the Interstate Commerce Commission to regulate intrastate commerce. To permit its application in this proceeding would deprive plaintiffs of their property without due process of law and would impair and be detrimental to the public welfare of the plaintiffs and of the general public in the area served by said passenger trains.

(b) There is no substantial evidence justifying the discontinuance of said passenger trains, and the evidence is completely without contradiction that Southern's over-all operation, including the passenger trains in question, results in a reasonable profit;

(c) The findings of fact by and the conclusions of the Examiner, later sustained and adopted by the Commission, were arbitrary and capricious and are unsupported by competent and substantial evidence;

(d) The adoption of the report of the Examiner by Division 3 of the Commission constitutes an abuse of discretion on the part of the Commission;

(e) The recommended report of said Examiner, and the adoption thereof by said Division 3, is not founded upon adequate evidentiary findings generally, and, in particular, relative to the alleged loss which Southern contends was incurred in the operation of said passenger trains;

(f) Prior to the institution of this proceeding before the Interstate Commerce Commission, the issue of public convenience and necessity for the continued operation of these trains had been determined by a court of competent jurisdiction, to wit, the North Carolina Supreme Court, *State of North Carolina ex rel. Utilities Commission, et al. v. Southern Railway Company*, 254 N. C. 73, 118 S. E. 2d 21 (1961); such determination by the Supreme Court, as of the time it was made, is conclusive and binding on all parties [fol. 8] in the present proceeding and is, therefore, *res adjudicata*. Therefore, the only question properly to have been adjudicated by the Interstate Commerce Commis-

sion was whether or not there had been changes of condition since the prior adjudication such as to warrant a finding that public convenience and necessity at that (later) time no longer required the operation of said passenger trains, and there was no allegation or proof of any such adverse change of conditions;

(g) The aforesaid order of the Interstate Commerce Commission is arbitrary and unreasonable and contrary to the overwhelming and undisputed evidence showing an urgent necessity for the continued operation of said rail passenger service for the convenience and necessity of the public generally and, in particular, those persons residing in the area served by said trains;

(h) The Southern Railway Company is bound and obligated by contract to maintain and operate said passenger trains, and the Interstate Commerce Commission had no power or authority under the Constitution or laws of the United States to abrogate, interfere with, or otherwise limit the railroad's contractual liability or obligation to provide said service, and the aforesaid order of the Interstate Commerce Commission (Exhibit "A" attached hereto), as well as all previous orders issued in that Commission's Finance Docket No. 21563, is null and void and in violation of plaintiffs' rights under the laws and the Constitution of North Carolina and the United States Constitution;

(i) The aforesaid order of the Interstate Commerce Commission deprives plaintiffs of "equal protection under the law" in violation of the Constitution of the United States;

(j) Said Interstate Commerce Commission order "abridges the privileges and immunities of citizens of the United States" including these plaintiffs, in violation of the United States Constitution;

[fol. 9] (k) The rights of plaintiffs to have the operation of said passenger trains continued and adequate passenger service rendered by the railroad of property rights, and the aforesaid order of the Interstate Commerce Commission has the effect of taking and will destroy said plaintiffs' property rights without compensation, all in violation

of the Constitutions of the State of North Carolina and the United States;

(1) Said order of the Interstate Commerce Commission "impairs the contractual obligation" of the railroad to provide the aforesaid rail passenger service and is, therefore, in violation of the Constitutions of the State of North Carolina and the United States.

10.

This action is brought under authority of and in conformity with the statutes of the United States and more particularly 28 U.S.C.A. § 2281, 28 U.S.C.A. § 1336, 28 U.S.C.A. 2321, 28 U.S.C.A. 2325, and 49 U.S.C.A. § 17 (9).

Wherefore, plaintiffs pray:

(a) That process be issued against the defendants herein.

(b) That a statutory court be convened as required by law in cases of this nature.

(c) That a final order and judgment be issued by the court annulling, vacating, and setting aside the July 2, 1962, order of the Interstate Commerce Commission in its Finance Docket No. 21563.

(d) That a final order and judgment be made and entered by the court, permanently restraining and enjoining the defendant, Southern Railway Company, from discontinuing the operation of its Passenger Trains Nos. 18 and 16 between Greensboro and Goldsboro, North Carolina.

[fol. 10] (e) For such other and further relief as the court may deem just and proper.

Thomas Wade Bruton, Attorney General of North Carolina;

Charles W. Barbee, Jr., Assistant Attorney General of North Carolina;

Attorneys for State of North Carolina.

E. C. Bryson, 310 Law School Building, Duke University, Durham, N. C., Attorney for Duke University;

Victor S. Bryant, Jr., Bryant, Lipton, Bryant & Battle, 111 Corcoran Street, Durham, N. C., Attorneys for The Durham Chamber of Commerce, Incorporated and The Research Triangle Institute;

A. H. Graham, Jr., Newsom, Graham, Strayhorn & Hedrick, 111 Corcoran Street, Durham, N. C., Attorney for Erwin Mills, Inc.;

E. C. Brooks, Jr., Brooks & Brooks, Trust Building, Durham, N. C., Attorney for Mary Trent Semans;

Attorneys for Plaintiffs.

[fol. 11]

EXHIBIT "A" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21563

SERVICE DATE

JULY 2, 1962

SOUTHERN RAILWAY COMPANY DISCONTINU-
ANCE OF SERVICE BETWEEN GREENSBORO
AND GOLDSBORO, N. C.

Decided June 27, 1962

Order issued granting petition of Southern Railway Company to discontinue the operation of trains 13 and 16 between Greensboro and Goldsboro, N. C.

Arthur J. Dixon and Earl E. Eisenhart for Southern Railway Company.

F. Kent Burns for State of North Carolina and North Carolina Utilities Commission.

Robert B. Holton, W. J. Burton, Jr., and R. L. Carnes for railway labor organizations, protestants.

Claude V. Jones, Victor S. Bryant, E. C. Bryson, E. C. Brooks, Jr., A. H. Graham, Jr., and Francis E. Walker for other protestants.

**REPORT OF THE COMMISSION
DIVISION 3, COMMISSIONERS TUGGLE,
HUTCHINSON AND GOFF**

GOFF, COMMISSIONER:

Exceptions to the report of the hearing examiner recommending the granting of the petition have been filed jointly by the State of North Carolina, the North Carolina Utilities Commission, Duke University, Mrs. Mary Trent Seamans, Research Triangle Institute, and Erwin Mills, Inc., all interveners in opposition. Petitioner, Southern Railway Company has replied thereto. Oral argument requested by the interveners was denied by order of the Commission, Commissioner Tuggle dated February 12, 1962, served February 16, 1962.

By petition filed April 6, 1961, the Southern Railway Company, herein called petitioner or the carrier, a common carrier by railroad subject to Part I of the Interstate Commerce Act, requests authority under section 13a(2) of the act to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C. A hearing was held in Raleigh, N. C., of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. Briefs were filed and a report and recommended order by the hearing examiner was served on October 27, 1961. We are in accord with the examiner's findings of facts and ultimate conclusions thereon which we hereby adopt as our own and will not restate herein except to the extent necessary for clarity of discussion. However, we believe that we should set forth our views on certain of the issues presented.

Prior to the filing of the petition with this Commission, the carrier on July 8, 1959, filed an application with the North Carolina Utilities Commission for authority to discontinue the operation of the same trains in question here. After hearing, the North Carolina Commission concluded that there was insufficient competent evidence in the record upon which to base a finding that public convenience and necessity for the continuance of the trains no longer exists and thereupon issued its order of January 20, 1960, deny-

[fol. 12] ing the application. On appeal, a judgment of the Superior Court of Wake County, N. C., sustaining the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al. v. Southern Railway Company*, 254 N. C. 73.

With this history of adjudication of the State proceeding in support of their argument, interveners at the hearing on the petition before us moved for dismissal asserting that the action is *res judicata*. The examiner has recommended that the motion be overruled and interveners on exceptions, contend error, reasoning that the issue of public convenience and necessity had been clearly litigated between the parties in the prior proceeding and was finally determined by a court of competent jurisdiction when the Supreme Court of North Carolina issued its decision on February 3, 1961, affirming the findings of the Superior Court.

We certainly do not question either the competency or jurisdiction of the North Carolina Utilities Commission or the Supreme Court of that State in the prior proceeding and respect their decision in that matter. We also recognize the finality of the Court's decision on questions within its judicial sphere. However, the issue before us on petition by Southern is whether public convenience and necessity permits the discontinuance of operation of the trains in interstate commerce, a question arising under a Federal Statute (section 13a(2) of the Interstate Commerce Act). Proceedings of this nature are not dissimilar to abandonment proceedings presented before us. Of the latter cases, Justice Brandeis, speaking for the United States Supreme Court in *State of Colorado v. United States*, 271 U.S. 153, 165-166 said:

Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres

in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission.

It follows that the question of public convenience and necessity as it affects interstate commerce and which is presently before us was not determined in the prior State proceeding and the doctrine of *res judicata* obviously is not applicable to the newly created legal situation. Accordingly, the motion is denied.

Intervenors allege further error by the examiner in recommending that 2 other motions to dismiss the petition be overruled, namely (1) that section 13a(2) of the Act is unconstitutional on its face and in its application; and (2) that petitioner failed to meet the applicable regulations regarding proper notice to the public.

[fol. 13] As the examiner has pointed out, it is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon the administer. See *Engineers Public Service Co. v. SEC*, 78 U. S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot 332, U. S. 788; *Paintz v. District of Columbia*, 72 App. D. C. 131, 112 F. 23, 39; *Todd v. SEC*, 137 F. 2d 475, 478. (6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.), certiorari denied 332 U. S. 765; and *Public Utilities Commission v. United States*, 355 U. S. 534, 539. But, intervenors argue, petitioner's net income from freight traffic over the line is such that overall profitable operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in an unconstitutional application of the provisions of the statute. In short, intervenors allege that petitioner's net income from its freight oper-

ations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the intent of Congress under the statute here involved. By analogy, interveners' view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act. Section 13a(2) specifically empowers the Commission to authorize the discontinuance of trains upon finding that (a) the present and future public convenience and necessity permit of such discontinuance or change in whole or in part of the operation or service of *such train or ferry*, and (b) the continued operation or service of *such train or ferry* without discontinuance or change, in whole or part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. (*italics supplied*).

The legislative history of section 13a(2) indicates that the purpose thereof is to permit the discontinuance of the operation of services that "no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). (*Emphasis supplied*). In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 I.C.C. 631, we stated:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

Nothing has been submitted herein to warrant a change in this view.

Nor can we agree with interveners that the petition in this proceeding should be dismissed for petitioner's failure

to observe the rule included in our order of November 12, 1959, requiring the posting of notice of the proposed discontinuance in each station, depot or other facility involved. [fol. 14] While the statute clearly requires such posting of notice in proceedings instituted under section 13a(1), the statute is equally clear in not providing for such requirement under paragraph 2:

"When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least 30 days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; * * *."

It is further apparent that the inclusion of the requirement regarding the posting of notice in our order of November 12, 1959, and the resultant conflict between that order and section 13a(2) was caused by an obvious error in not amending section 43.6 to conform to the relettering of section 43.5 in our order¹ of the above date. Since petitioner complied with the rules and regulations promulgated by our order of August 14, 1958, and since there was no intent that our subsequent amending order of November 12, 1959, impose an additional requirement regarding notice upon petitioners in proceedings under section 13a(2), and since no specific evidence has been introduced to show that the position of any of the parties has been prejudiced or materially affected by our error, the motion of interveners is denied.

Interveners' exceptions include other assignments of error to the examiner (1) in computing the revenues and expenses of operation of the trains involved, (2) in failing to give sufficient weight to the overall prosperity of the petitioner when considering whether continuance of the operation would constitute an undue burden on interstate

¹ This oversight was corrected by the issuance of the Commission's order of November 28, 1961 (Ex Parte No. 217) in which section 43.6 was amended to eliminate reference to paragraph (j) of section 43.5.

commerce, (3) in failing to consider the increase in the average number of patrons in 1960 and the period of 1961 over the number of passengers utilizing the service in 1959, (4) in failing to recognize that petitioner had allowed service along and over the line to decline in order to present a plausible case for the abandonment of passenger service, and (5) in concluding that future industrial expansion of the area is not dependent upon existing rail passenger service.

In his determination of the financial results of operation the examiner has allowed or disallowed certain items of expense consistent with our prior decisions in similar discontinuance proceedings. Interveners have assailed the methods utilized in approximating certain cost items where the actual expense cannot be determined. However, they have offered no substitute formula whereby a more accurate determination may be made. Under the circumstances we will rely on the methods which have been acceptable to us in the past.

The contention that the overall prosperity of the petitioners must be given effect in the disposition of the issues involved herein has been adequately discussed in our consideration of one of interveners' motions and no further clarification of our position in that matter is necessary.

[fol. 15] The fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961. The record also discloses that the increase in the 1961 period was due largely to an increased number of group movements of school children. However, despite the increase in patronage during the first 5 months of 1961, passenger revenues during that period amounted to only \$10,653 or approximately \$26,000 less than train and engine crew wages.

The evidence of record fails to support interveners' contention that petitioner has deliberately discouraged the use of the trains as a part of its plan to present a plausible case for discontinuing passenger service over the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment and, as stated by the examiner, we have repeatedly held that pro-

spective patrons who must be coaxed to use a service have no urgent need for it.

We have also expressed the view that while industrial expansion may, under certain circumstances, depend upon the existence of rail passenger service, it would appear that prospective industries are much more interested in freight service than rail passenger facilities. See *Chicago, M. St. P. & P. R. Co. Discontinuance of Service*, 307 I.C.C. 565, 578 and *Chicago & N. W. Ry. Co. Discontinuance of Service*, 307 I.C.C. 775, 782.

From a review of the evidence of record we conclude that the cost to the carrier of operating the trains involved greatly exceeds the benefit derived from said trains by the traveling public; that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express; that the public will not be materially inconvenienced by the discontinuance of the service here involved; that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce.

We have heretofore concluded that we have no authority under section 13a(2) to impose conditions for the protection of rail employees adversely affected by the discontinuance. While it is recognized that the probable adverse effect upon employees is a factor to be considered in determining public convenience, such probable adverse effect in the present proceeding does not afford a sufficient basis to justify continued operations of the involved trains.

Contentions of the parties as to either law or fact not specifically discussed herein have been given consideration and found to be without material significance or not justified.

We find that the present and future public convenience and necessity permit the discontinuance of service by the Southern Railway Company of its passenger trains Nos. 13

and 16 between Greensboro and Goldsboro, N. C., and that the continued operation thereof would constitute an unjust and undue burden upon the interstate operations of that carrier and upon interstate commerce.

An appropriate order will be entered.

[fol. 16]

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 27th day of June, A. D. 1962.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINU- ANCE OF SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N. C.

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said Division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions of law, which report is hereby referred to and made a part hereof:

It is ordered, That interveners' motions to dismiss the proceeding be, and they are hereby denied.

It is further ordered, That the petition of the Southern Railway Company to discontinue the operation of the passenger trains specified in the aforesaid report be, and it is hereby, granted.

It is further ordered, That this order shall be effective 20 days from the date of service hereof; and

It is further ordered, That if the authority herein granted is not exercised within one year from the effective date thereof, it shall be of no further force or effect.

By the Commission, division 3.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 17]

EXHIBIT "B" TO COMPLAINT

• SERVICE DATE
JULY 20, 1962

ORDER

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINU-
ANCE OF SERVICE BETWEEN GREENSBORO
AND GOLDSBORO, N. C.

In the Matter of a Petition for a Determination of the
Presence of an Issue of General Transportation Importance.

PRESENT: KENNETH H. TUGGLE, Commissioner, to
whom the above-entitled matter has been as-
signed for action thereon.

Upon consideration of the record in the above-entitled
proceeding, including the petition of the State of North
Carolina, the Durham Chamber of Commerce, Research
Triangle Institute, Erwin Mills, Inc., Duke University, and
Mrs. Mary Trent Semans, filed July 16, 1962, under the
provisions of section 1.101(a)(4) of the General Rules of
Practice before the Commission, for a determination of the
presence of an issue of general transportation importance;
and

It appearing, That the Commission, Division 3, by its re-
port and order decided June 27, 1962, and served July 2,
1962, granted the petition of the Southern Railway Com-
pany to discontinue its passenger train service between
Greensboro and Goldsboro, N. C., which order is to become
effective 20 days from its date of service; and

It further appearing, That the petitioners herein have
complied with the provisions of said section 1.101(a)(4)
of the General Rules of Practice and that the question of
the presence of an issue of general transportation im-
portance will become moot if the order of the Commission,
Division 3, decided June 27, 1962, is to become effective:

It is ordered, That the effective date of the order of the Commission, Division 3, decided June 27, 1962, in this proceeding be, and it is hereby, postponed pending the determination of the petition requesting a determination of the presence of an issue of general transportation importance.

Dated at Washington, D. C., this 18th day of July, A. D. 1962.

By the Commission, Commissioner Tuggle.

HAROLD D. MCCOY
Secretary

(SEAL)

[fol. 18]

EXHIBIT "B-1" TO COMPLAINT

SERVICE DATE
AUGUST 8, 1962

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 6th day of August, A. D. 1962.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINU- ANCE OF SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N. C.

Upon consideration of the record in the above-entitled proceeding, including the petition of the State of North Carolina, the Durham Chamber of Commerce, Research Triangle Institute, Erwin Mills, Inc., Duke University, and Mrs. Mary Trent Semans, filed July 16, 1962, under the provisions of section 1.101(a)(4) of the General Rules of Practice before the Commission, for a finding that this proceeding involves an issue of general transportation importance; and

It appearing, That no issue of general transportation importance is involved in the proceeding:

It is ordered, That said petition be, and it is hereby, denied, and the order of June 27, 1962, be, and it is hereby made effective 15 days from the date of service hereof.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

[fol. 19]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action File No. C-158-D-62

[Title omitted]

ANSWER OF SOUTHERN RAILWAY COMPANY
—Filed September 10, 1962

The Defendant, Southern Railway Company, answering the Complaint of the Plaintiffs, alleges and says:

1.

It is denied that many people in the City and County of Durham use the trains involved in this proceeding. It is denied that the operation of the Research Triangle requires the services of these trains. It is denied that the officers, directors and employees of Erwin Mills, Inc. use [fol. 20] the services of the trains involved in this proceeding. Except as herein denied, the allegations of Paragraph 1 are admitted.

2.

The allegations of Paragraph 2 are admitted. In this connection, it is specifically alleged that Greensboro is on the main line of the Southern Railway Company and it is served by five (5) trains daily in each direction between Washington, D. C., Atlanta, Georgia, and other points, and two (2) trains daily in each direction between Greensboro and Asheville via Winston Salem; that Raleigh is on the main line of the Seaboard Airline Railroad Company and is served by six (6) trains daily in each direction between Richmond, Virginia, and points North, and Florida points and Atlanta and Birmingham, and one (1) train daily in each direction between Raleigh and Portsmouth, Virginia; that Selma, North Carolina, is on the main line of the Atlantic Coast Line Railroad and is served by three (3) trains daily in each direction between Richmond, Virginia, and points North, and Florida; that Goldsboro, North Carolina, is on the Atlantic Coast Line Railroad and is served by one (1) train daily in each direction between Rocky Mount and Wilmington, North Carolina, which connects with other trains at Rocky Mount to provide through sleeping car service between Wilmington, North Carolina, Washington and New York.

3.

It is denied that the passenger trains involved in this proceeding afford the only passenger service between Greensboro and Goldsboro, the truth being that passenger service between the two points is provided by numerous busses. In addition, the Cities of Greensboro, Raleigh, Selma and Goldsboro are served by passenger trains as described in Paragraph 2 above. Except as herein denied, the allegations of Paragraph 3 are admitted. In this connection, the Defendant attaches hereto as its Exhibit No. 1 a true and correct copy of the Report of Examiner William J. Gibbons.

4.

The allegations of Paragraph 4 are admitted.

5.

It is denied that the discontinuance of the operation of the trains involved in this proceeding would constitute a breach of the lease agreement with the North Carolina Railroad Company. Except as herein denied, the allegations of Paragraph 5 are admitted.

[fol. 22]

6.

It is admitted that Southern Railway Company is not in default in the payment of any of its financial obligations; that the Southern Railway Company does not operate at a loss; that the passenger trains involved in this proceeding are the only passenger trains running between Greensboro and Goldsboro. Except as herein admitted, the allegations of Paragraph 6 are denied.

7.

The allegations of Paragraph 7 and each subdivision thereof are denied.

8.

It is denied that the lease between the Southern Railway Company and the North Carolina Railroad Company imposes upon the Southern the obligation to continue the operation of the passenger trains involved in this action or that the discontinuance of such trains would constitute a breach of said lease. Except as herein denied, the allegations of Paragraph 8 are admitted.

9.

The allegations of Paragraph 9 and each subdivision thereof are denied.

[fol. 23]

10.

The allegations of Paragraph 10 are admitted.

Wherefore, having fully answered the Complaint of the Plaintiffs, the Defendant prays that this action be dis-

missed, that the costs of this action be taxed to the Plaintiffs, and for such other and further relief as the Court may deem just and proper.

Southern Railway Company, By Earl E. Eisenhart,
Jr., P. O. Box 1808, Washington 13; D. C., James
A. Bistline.

Joyner & Howison, By W. T. Joyner, Jr.

[fol. 24]

EXHIBIT 1 TO ANSWER

INTERSTATE COMMERCE COMMISSION

Served October 27, 1961

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect, has been served.

Finance Docket No. 21563

**SOUTHERN RAILWAY COMPANY
DISCONTINUANCE OF SERVICE BETWEEN
GREENSBORO AND GOLDSBORO, N. C.**

Decided _____

- (1) Motions of protestants to dismiss proceeding overruled.
- (2) Order granting petition of Southern Railway Company to discontinue the operation of trains 13 and 16 between Greensboro and Goldsboro, N. C.

Arthur J. Dixon and Earl E. Eisenhart for Southern Railway Company.

F. Kent Burns for State of North Carolina and North Carolina Utilities Commission.

Robert B. Holton, W. J. Burton, Jr., and R. L. Carnes for railway labor organizations, protestants.

Claude V. Jones, Victor S. Bryant, E. C. Bryson, E. C. Brooks, Jr., A. H. Graham, Jr., and Francis E. Walker for other protestants.

**REPORT AND ORDER
RECOMMENDED BY WILLIAM J. GIBBONS,
HEARING EXAMINER**

On April 6, 1961, the Southern Railway Company, a common carrier by railroad subject to Part I of the Interstate Commerce Act, filed a petition under section 13a(2) [fol. 25] of the Act for authority to discontinue the operation of trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C. A hearing was held in Raleigh, N. C. on July 11 through July 14, 1961, of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. The Southern Railway Company will be referred to herein as the "petitioner", the

railway labor organizations and their representatives as "employees", and all other parties, including the State of North Carolina and the North Carolina Utilities Commission, will be referred to as "protestants". The proceeding has been referred to the examiner who presided at the hearing for a recommended report and order. Briefs have been filed.

On July 8, 1959, the Southern Railway Company filed an application with the North Carolina Utilities Commission for authority to discontinue the operation of the same trains that are involved in this proceeding. After hearing, the North Carolina Commission issued its order dated January 20, 1960, denying the application. On appeal, a judgment of the Superior Court of Wake County, N. C., affirming the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al. v. Southern Railway Company*, 254 N.C. 73.

At the outset of the hearing, protestants filed three separate motions to dismiss the proceeding on the grounds that (1) section 13a(2) is unconstitutional, (2) decision of the Supreme Court of North Carolina which sustained the order of the State Commission is res judicata, and (3) no proper notice of the hearing was given as required by law.

It is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon to administer. See *Engineers Public Service Co. v. SEC*, 78 U. S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot 332 U.S. 788; *Panitz v. District of Columbia*, 72 App. D.C. 131, 112 F. 23, 39; *Todd v. SEC*, 137 F. 2d 475, 478 (6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.), certiorari denied 332 U.S. 765; and *Public Utilities Commission v. United States*, 355 U.S. 534, 539.

With respect to the second motion to dismiss, it is the position of protestants that the matter has been conclusively adjudicated by a court of competent jurisdiction and that all parties are bound by such determination in the absence of an allegation or showing of a change of conditions, and

since no change in conditions has been alleged or shown, the decision of the Supreme Court of North Carolina, *supra*, is res judicata.

In the past, this Commission has superseded court decisions when the applicable statute clearly indicated that it should do so. *Chicago, S. S. & S. B. R.*, 234 I.C.C. 34; *Street Elect. Ry. & M. Coach Employees v. C., A. & E. R. [fol. 26] Co.*, 234 I.C.C. 301; and *Sprague v. Woll*, 122 F. 2d 128, certiorari denied 314 U. S. 669. The jurisdiction of this Commission over the subject matter of this proceeding has been established by virtue of the denial of petitioner's application by the North Carolina Commission and the subsequent filing by petitioner of the petition herein. After the jurisdiction of this Commission has been properly invoked, section 13a(2) contemplates that the matter be tried de novo and that the prior determination by the appropriate State authority is of an advisory nature only, having no binding effect upon this Commission.¹ To hold otherwise would render section 13a(2) ineffectual or wholly inoperative. Moreover, section 13a(2) raises an issue with respect to the burden on interstate commerce, an issue which neither the North Carolina Commission nor the North Carolina Supreme Court was empowered to determine. The doctrine of res judicata does not preclude relitigation when a new or different claim or issue is presented. For the above reasons, the examiner concludes that this Commission is not bound by the order of the North Carolina Commission or by the State Court decisions which affirmed that order.

Protestant's third motion to dismiss is based upon the ground that petitioner did not post notices of its proposed discontinuance in its stations, depots and passenger cars as required by law. In support of this motion, they contend that the applicable regulations (49 CFR 43.1) specifically state that the rules apply to a "notice" under section 13a(1) of the Act, or to a "petition" under section 13a(2).

¹ Section 13a(2) provides, among other things, that this Commission "is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph."

and further that section 43.5(j) of the regulations requires that a copy of the notice of the proposed discontinuance be posted "in a conspicuous place in each station, depot or other facility involved, including each ferry and each passenger car ..." (49 CFR 43.5(j)).

It is to be observed that the regulations define the term "notice" as a notice provided for in section 13a(1) of the Act, and the term "petition" as a petition filed under section 13a(2). (49 CFR 43.2). Section 43.5 of the regulations, paragraphs (a) through (k), specifically applies to a "notice" in a section 13a(1) proceeding, and section 43.6, paragraphs (a) through (d) specifically applies to a "petition" in a 13a(2) proceeding.²

Among other things, section 43.6 provides that petitions for authority to effect the discontinuance of a train shall contain information required by section 43.5 excepting [fol. 27] paragraph (i) thereof. (49 CFR 43.6). By requiring all other information contained in section 43.5 excepting paragraph (i), section 43.6 would appear to require the carrier to comply with the notice posting requirement of section 43.5 (j).

Despite the language of section 43.6, such a requirement on the part of the carrier was never intended in a section 13a(2) proceeding. As originally issued by this Commission on August 14, 1958, paragraph (i) of section 43.5 contained the requirement with respect to the posting of notices in a section 13a(1) proceeding, and section 43.6, relating to petitions, required the information set forth in section 43.5 excepting paragraph (i) thereof. (23 F.R. 6378, August 20, 1958). Thus, it is clear that, as originally issued, the applicable regulations did not require that the notice called for in a section 13a(1) proceeding be required in a section 13a(2) proceeding.

By subsequent amendments to the regulations on November 12, 1959, a new paragraph (i) was added to section 43.5 and the then existing paragraph (i) was amended and redesignated paragraph (j). (25 F.R. 434, January 20, 1960). No amendment or change in section 43.6 was made at that time and through inadvertence or as a result of an

² Sections 43.7 and 43.8 apply to notices and petitions.

apparent mishap, the reference to paragraph (i) was retained in section 43.6 when it (paragraph (i)) should have been relettered paragraph (j). Thus, the only conclusion that can be drawn from the administrative history of the applicable regulations as well as from the contemporaneous construction placed thereon by this Commission is that the type of notice required in a section 13a(1) proceeding is not required in a section 13a(2) proceeding. In this connection, see *Pennsylvania R. R. Co.—Discontinuance of Passenger Service, Camden-Pemberton, N. J.*, F. D. No. 20553, decided June 6, 1960. To interpret the regulations differently would be inconsistent with the obvious intent expressed in sections 13a(1) and 13a(2) of the Act.

For the reasons stated, the 3 motions of protestants above-described to dismiss this proceeding should be overruled.

The trains sought to be discontinued, hereinafter identified as trains 13 and 16, operate daily between Greensboro and Goldsboro, a distance of 129.1 miles. As presently scheduled, eastbound train 16 leaves Greensboro at 6:10 a.m., and arrives at Goldsboro at 10:45 a.m., serving 12 intermediate stations on regular stops and 9 stations on flag stops. Train 13 leaves Goldsboro at 3:05 p.m., and arrives at Greensboro at 7:50 p.m., serving 10 regular intermediate stations and 11 flag stops. These are the last two passenger trains operating in an east-west direction between Greensboro and Goldsboro. Appendix A hereto shows the schedules of the trains, the regular stops, flag stops and the populations of the cities and towns served by the trains.

[fol. 28] The trains regularly consist of a 1500-horsepower diesel electric locomotive, a passenger coach, and a combination car for passengers, baggage and express. In addition, on the portion of the run between Raleigh, N. C., and Greensboro, each train handles a sleeping car which, in turn, is handled on other passenger trains of petitioner between Greensboro and Washington, D. C., and on trains of the Pennsylvania Railroad between Washington and New York City, thus providing through sleeping car service between Raleigh, Washington, Philadelphia and New York City. The trains carry express but no mail. The

trains are operated by a 5 man railroad crew consisting of an engineer, fireman, conductor, flagman, and brakeman. Although one crew makes a round trip, two crews are necessary in the operation because of limitations on the number of working days. In addition, a pullman conductor and a porter work the sleeping cars and an express messenger works the trains 5 days a week.

During the periods indicated below, the total number of passengers carried on trains 13 and 16, the daily average on each train and average passenger mile per train mile were as follows:

Passengers			
	1959	1960	1961 (5 mos.)
Train 13	6,462	7,076	4,384
Train 16	7,789	7,700	4,550
Total	14,251	14,776	8,934

Daily Average			
	1959	1960	1961 (5 mos.)
Train 13	17.7	19.3	29.0
Train 16	21.3	21	30.1
Total	19.5	20.2	29.6

Average Passenger Mile Per Train Mile			
	1959	1960	1961 (5 mos.)
Train 13	6.51	7.16	10.67
Train 16	7.16	7.50	9.27
Total	6.83	7.33	9.97

Appendix "B" shows the on-and-off passenger count at each station for train 13 in 1960 and the daily average at each station. Appendix "C" shows similar data with respect to train 16 in 1960. In 1959 and in the first 5 months of 1961, the pattern of entrainment and detrainment was substantially the same as in 1960. As shown by these statistics, the overwhelming majority of the stations served averaged less than 1 passenger a day boarding train 13 or

16. Of the total passengers (7076) carried by train 13 in [fol. 29] 1960, 989 passengers entrained at Goldsboro, 826 at Raleigh, 2,929 at Durham and 1,464 at Burlington, and 5,048 passengers detrained at Greensboro. Of the total passengers (7,700) carried by train 16 in 1960, 5,101 entrained at Greensboro, 112 at Burlington, 775 at Durham and 667 at Raleigh. All but 1,279 of these passengers on train 16 detrained before reaching the end of the line at Goldsboro, the heaviest detrainment (2,712) occurring at Durham, and at Burlington and Raleigh, with 1,275 each.

In 1948, both trains carried 56,739 passengers, an average of 77.51 per trip, as compared with a total of 14,776, or an average of 20.19 per trip, in 1960. During the same period, total passenger revenues declined from \$60,534, or an average passenger revenue of \$82.70 per trip, to \$21,135 or \$28.87 per trip. In 1959, 1960 and during the first 5 months of 1961, the average revenue per passenger was respectively, \$1.39, \$1.43, and \$1.19. Each train earns from 21 to 22 cents per train mile in passenger revenue, and about 34 cents per train mile in express revenue.

As shown by petitioner's exhibits, the revenues derived from the operation of the trains in 1959, 1960, and the first 5 months of 1961, the direct expenses incurred in connection therewith and the expenses in excess of revenues were as follows:

	1959	1960	1961 (5 mos.)
<i>Revenues</i>			
Passenger	\$ 19,839	\$ 21,135	\$10,653
Express	\$ 31,875	\$ 31,630	\$ 4,697
Miscellaneous	\$ 356	\$ 336	\$ 140
<i>Total Revenues</i> ..	\$ 52,070	\$ 53,101	\$15,490
Direct Expenses	\$174,907	\$170,742	\$70,321
<i>Expenses in excess of Revenues</i>	\$122,837	\$117,641	\$54,831

Appendix D. shows the details of the operating results for both trains for 1960. Similar data is of record for 1959 and for the first 5 months of 1961.

Passenger revenues are actual as determined from the tickets collected by conductors, showing station to station travel, the class of passage and the type of ticket used. When interline travel is involved, revenues are determined on a mileage pro rate. Miscellaneous revenues represent actual revenues received for the handling of newspapers, and express revenues are computed by the application of the system average revenue per carfoot mile to the carfoot miles assigned to trains 13 and 16. As to the computation of expenses, the wages of train and engine crews, vacation allowances, payroll taxes, and equipment rental are actual as shown by petitioner's books and records. Train fuel [fol. 30] expenses were determined by applying the system average cost per gallon to the number of gallons of fuel consumed by these trains during a test period. Net losses from the operation of the sleeping car represents the excess of expenses over revenues between Raleigh and Greensboro, as billed to petitioner by the Pullman Company. Locomotive expenses are computed on the system average cost per diesel locomotive unit mile, and passenger car expenses are determined on a system average cost per passenger car mile. The joint facility expenses at the Goldsboro Union Station are computed on the basis of the number of cars moving in and out of the station.

Expenses resulting from damage to livestock and injuries to persons, incurred in 1960 and 1961, are actual. Neither of these expenses was incurred in 1959. Excluded from the carrier's operating costs are expenses for maintenance of tracks and structures, depreciation on equipment, traffic and supervisory expenses, property taxes, and general expenses. Other financial data presented by petitioner shows that system off-line revenues derived from the trains sought to be discontinued amounted to \$73,960 in 1959 and \$83,034 in 1960. After reducing these amounts by 50 percent as the cost of producing the revenue, the net feeder value of trains 13 and 16 was \$36,980 and \$41,517, respectively, in 1959 and 1960.

As a result of the discontinuance of these trains, petitioner claims that it will realize savings of \$122,837, which is equivalent to its out-of-pocket loss in 1959. In addition, it estimates that it will save another \$15,015 annually,

made up of station expenses (\$4,046), rental for lease of property at Burlington (\$6,820), and heat and light in various stations (\$4,149).

With respect to other available methods of transportation, petitioner submitted data to show that 15 motor buses operate daily in each direction between Greensboro and Raleigh and 8 between Raleigh and Goldsboro, with 2 daily scheduled operations in through service between Greensboro and Goldsboro. In addition, local bus service is available twice a day in each direction between Raleigh and Durham. Most of the buses in the area provide through service to and from points beyond the terminals of trains 13 and 16, in addition to providing local service. Of the 23 stations served by trains 13 and 16, McLeansville, Glen and Rose are the only stations not directly served by motor bus.

Other rail passenger service is available at 4 stations now served by trains 13 and 16. At Greensboro, 7 trains of the petitioner in each direction provide daily service, and at Raleigh 6 daily trains of the Seaboard Airline Railroad are available in each direction. The Atlantic Coast Line Railroad operates 3 passenger trains daily in each direction [fol. 31] through Selma, and 1 train a day through Goldsboro. These trains provide through service, including pullman accommodations, to and from, among other points, Washington, D. C., New York City, Atlanta, Ga., Birmingham, Ala., and Richmond, Va. In addition, daily air line service is available between the Raleigh-Durham and the Greensboro-High Point Airports and Washington, D. C., New York, Philadelphia, Chicago and other major cities.

At present most of the express traffic originating at and destined to Greensboro, Burlington, Durham, Raleigh, Selma and Goldsboro is handled by over-the-highway motor trucks of the Railway Express Agency, although it can still be transported via trains 13 and 16. At 8 of the smaller communities, which the Railway Express Agency is not presently authorized to serve by truck, express service is provided exclusively by trains 13 and 16. In the event the trains are discontinued, the Railway Express Agency proposes to handle all of the express by motor truck. In addition, other passenger trains previously mentioned herein provide express service at Greensboro, Raleigh, Selma and

Goldsboro, and various bus lines in the area offer a limited express service.

For the most part, the 7 county-area through which the trains operate is traversed by a network of paved, all weather highways, at least one of which substantially parallels petitioner's railroad. Most of the communities served by the trains are located on improved highways or in close proximity thereto. In the area served by the trains, there is an average of one passenger automobile for every 2.9 persons as compared with an average for the entire State of one automobile for every 3.3 persons.

[fol. 32] At the hearing before the North Carolina Public Utilities Commission, 18 public witnesses testified as to the need for the service provided by trains 13 and 16. In the instant proceeding, testimony was offered by 21 witnesses, most of whom use the trains with varying degrees of frequency. Many of the witnesses testified as to the use of the trains by members of their families, their employees and associates. Fifteen of the opposition witnesses, including college professors, research scientists, business executives and government employees, came from the Durham area or had an interest there; and 3 were business men from Burlington. Their use of the trains is primarily for travel on the sleeping car between Durham or Burlington and Washington, D. C., Philadelphia, New York City and other intermediate points. For personal convenience or because of medical necessity, these persons use the trains instead of other available modes of transportation. One witness expressed concern about express service to and from Elon College,⁴ while others feared that the discontinuance of these trains would hamper the industrial development of the area. Through oral testimony, petitioner denied that the presence or absence of rail passenger service has any bearing on industrial development.

³ Durham and Burlington are 55 and 21.4 rail miles, respectively, from Greensboro, at which point the Pullman car on trains 13 and 16 is switched to and from other trains of petitioner.

⁴ For sometime in the past, express service at this station has been provided by truck.

Other evidence of protestants relates to the uncleanness of the passenger stations on the line, and the deterioration of service generally, including the lack of dining facilities on the trains, the failure of petitioner to pre-cool the cars in the summertime and to properly heat them in the wintertime, and difficulties encountered in securing reservations. At the hearing, protestants took the position that poor service and lack of modern facilities, plus petitioner's failure to advertise or solicit business, are primarily responsible for the reduction in passenger patronage. As against this, petitioner contends that its passenger facilities are clean, comfortable and modern, and that in the past efforts to attract additional patronage through advertising and solicitation have been unproductive.

Both at the hearing and on brief, protestants assail the method used by petitioner in computing many of its expenses on the basis of system averages. In the past this method of computing locomotive and passenger car expenses has been approved in train discontinuance proceedings as reasonably approximating the actual expenses incurred. *Louisville & N. R. Co., Discontinuance of Service*, 307 I.C.C. 173, and *Missouri Pac. R. Co., Discontinuance of [fol. 33] Service*, 307 I.C.C. 787. As to the expenses at the Union Station in Goldsboro, these expenses are actual and will be savable to petitioner, since trains 13 and 16 are the last trains of petitioner using that terminal. Upon the discontinuance of the trains herein, the terminal expenses at Goldsboro would undoubtedly be redistributed among other carriers using the terminal. Since the terminal expense of the petitioner at Goldsboro amounts to about \$7,000 annually,⁵ it does not appear that the redistribution thereof will impose an undue burden upon other carriers in interstate commerce. In this connection, see *Wabash Railroad Company Discontinuance of Service Between Toledo, Ohio, and Fort Wayne, Ind.*, F. D. No. 20710, decided November 30, 1959.

It is doubtful that full recognition should be accorded to expenses for damage to livestock and injury to persons,

⁵ Terminal expenses at Goldsboro were \$6,350 in 1959 and \$6,940 in 1960.

since neither of these recur with sufficient regularity to treat them as part of petitioner's normal operating expenses. Inasmuch as both items of expense are insubstantial, the exclusion of them from petitioner's operating results will not alter the ultimate findings made herein.* Except for these, the remaining expenses presented by petitioner are directly attributable to the operation of the trains and appear to be proper and fairly realistic.

In determining the net feeder value of these trains, the protestants contend that the reduction of the gross system-connected revenues by 50 percent, as representing the cost of producing such revenues, is purely speculative. Protestants, however, suggest no alternative cost formula. In rail abandonment proceedings as well as in train discontinuance cases, the Commission has accepted the 50 percent formula as reasonably reflecting the cost of producing system off-line revenues: *Chicago, M. St. P. & P. R. Co., Discontinuance of Service*, 307 I.C.C. 565. In the absence of a more precise method for determining net feeder value, the examiner accepts as reasonable the 50 percent cost formula used by petitioner.

It is the further position of protestants that revenues are understated since no revenue was assigned to the trains for the transportation of pass riders. In a recent case, the Commission, in rejecting a similar contention, observed that "constructive revenues or phantom revenues—revenues [fol. 34] from fares never collected—are of no measurable financial advantage to the carrier, and, thus should be disregarded in the computation of total revenues." *Southern Pacific Company Partial Discontinuance of Passenger Trains Between Los Angeles and Sacramento; Oakland and Sacramento; and San Francisco and San Jose, Calif.*, F. D. 20503, decided August 11, 1961. These remarks are equally applicable here. While no doubt the carrier incurs some expense in the transportation of pass riders, the expenses involved should be considered as being merely incidental to the petitioner's primary responsibility of oper-

* In 1960 expenses for injuries to persons were \$500 and for damage to livestock \$50. In 1961 expenses for injuries to persons was \$3,500. Neither of these expenses was incurred in 1959.

ating the trains for the benefit of the public. So long as the trains are required to operate, the additional cost of carrying pass riders or deadheads is infinitesimal. Thus, there is no basis for reducing or adjusting the expenses of these trains because of the pass riders. Similarly, there is no merit in protestants' contention that the computation of express revenues on a car-foot mile basis is improper. See, *Chicago & N. W. Ry. Co. Discontinuance of Service*, 307 I.C.C. 775.

Another contention of protestants is that any operating deficit on this line should be reduced by a percentage amount equivalent to the combined federal and State corporate income taxes. In considering and rejecting a similar contention in *New York Central R. Co. Abandonment*, 254 I.C.C. 745, 755, the Commission stated:

"The committee of Yonkers Commuters contends, in effect, that the actual loss of \$60,155 from the operation of the branch should be reduced to \$36,093 because if the loss had not been incurred, applicant would have paid a 40 percent Federal income tax on an equal sum, amounting to \$24,062. but obviously the loss was actually incurred; and it cannot reasonably be considered that it was less because applicant's total income [sic] tax might have been \$24,062 less than it would have been had it not been incurred."

The findings and conclusions in the above report were affirmed in *Public Service Commission of New York v. United States*, 56 F. Supp. 351, affirmed 323 U. S. 675, rehearing denied 323 U. S. 817. The Commission has recently reaffirmed its position on this issue. See *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc. supra*. The contention of protestants on this issue must accordingly be rejected.

At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,599, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations,

must be given effect in the disposition of the issues involved [fol. 35] herein. With these contentions, the examiner disagrees. The legislative history of section 13a(2) indicates that the purpose thereof is to permit the discontinuance of the operation of services that "*no longer pay their way* and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). (Emphasis supplied). In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc. supra*, the Commission made the following pertinent statement:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

In this same connection, the argument that losing passenger operations must be supported by constantly increasing freight rates is also untenable. In rejecting this argument, the Commission stated that such "theory of regulation would not be consonant with the national transportation policy, and would be fraught with disastrous possibilities." *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, 61. Similarly, the fact that petitioner's system operations are profitable is entitled to little or no weight. See *New York Central R. Co. Abandonment, supra*; *Seaboard A. L. Ry. Co. Abandonment*, 257 I.C.C. 758, *Great Northern Ry. Co.—Discontinuance of Service, supra*.

Although protestants submitted no financial data with respect to trains 13 and 16, they contend on brief that the maximum loss incurred by the operation of these trains in 1960 was \$33,688 instead of petitioner's claimed loss of \$117,641. To reach this conclusion, protestants subtracted \$6,940 (terminal expenses at the Goldsboro Union Station) and \$41,517 (net feeder value) from petitioner's claimed

loss. From this amount (\$70,184), they further subtracted a federal income tax deduction (52 percent of \$70,184) of \$36,496.

For reasons hereinbefore stated, terminal expenses at Goldsboro have been allowed, and protestants' contention regarding income tax savings has been overruled. In the foregoing computation, protestants assume that petitioner will lose all system-connected revenue produced by these trains. Petitioner claims that it will retain all of it, [fol. 36] Neither of these positions can be reasonably sustained. It seems obvious that petitioner will neither lose nor retain all of such revenue. The exact amount of system-connected revenue losses, however, can not be determined from the record. But assuming that the entire net feeder value of these trains will be lost, petitioner's minimum out-of-pocket loss from the operation of these trains, on the basis of 1960 figures and after deducting \$550 for non-recurring expenses resulting from injuries to persons and livestock would be \$75,574 annually. Add to this the savings of \$15,015 in station expenses, previously referred to herein, and the net savings to be realized from the discontinuance of these trains would be at least \$90,589 a year. On the theory that some of the feeder value will be retained, the examiner is of the opinion that the annual savings will be considerably in excess of \$90,589 a year.

Among others, the factors to be considered in a proceeding of this nature are the populations of the communities served, the use made by the public of the trains sought to be discontinued, other means of transportation in the area, and the financial losses sustained by the carrier in providing the service. *Colorado v. United States*, 271 U. S. 153. Under the provisions of section 13a(2), the Commission's determination must be designed to protect interstate commerce from onerous burdens which may affect the ability of the carrier to continue to provide efficient transportation service to the public generally. Thus, in determining public convenience and necessity, the needs of the entire public, as distinguished from the relatively few, must be taken into

¹ There appears to be a mathematical error of \$1,000 in protestants' calculation.

account. When there is a demonstrated need for the service, the continuation thereof might be justified even at a loss to the carrier. In the final analysis, however, the need for the service must be balanced against the losses sustained in providing the service.

That some need exists for the service of trains 13 and 16 is shown by the testimony of the opposition witnesses. Their need, however, is relatively insubstantial when viewed in the light of the density of the population of the area served and the patronage that is potentially available. Only scattered opposition appeared at the hearing in this proceeding and at the hearing held by the North Carolina Commission, and most of the opposition came from Durham, with virtually none east thereof. It is obvious that the needs of these few would be insufficient to justify the institution of a new service. Conversely, it should be equally apparent that under the test of public convenience and necessity, their needs no longer justify the continuation of existing service.

In arriving at this conclusion, the fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961 as compared with the entire year of 1959. In actual numbers, the daily [fol. 37] average for both trains increased from 19.5 in 1959 to 29.6 in the first 5 months of 1961.

These figures, however, are of minor significance because the comparison of two entirely different periods fails to take into consideration seasonal variations in passenger traffic patterns and for the further reason that the increase in 1961 was due largely to an increased number of group movements of school children. Moreover, the percentage increase becomes even less meaningful when considered in the light of petitioner's statement that 82,000 additional passengers a year on these trains would be required to enable it to break even. Despite the increase in patronage in the first 5 months of 1961, passenger revenues during that period amounted to only \$10,653, or \$26,020 less than the wages of the train and engine crews.

For most of the major communities, alternate passenger service is available by bus and by air and 4 communities

have rail passenger service. Only 3 small communities would be left wholly without bus service. Likewise, express service by motor truck, as proposed by the Railway Express Agency, should be adequate for most of the communities. While industrial expansion may, under certain circumstances, depend on rail passenger service, it would appear that industry is much more concerned about rail freight service than rail passenger facilities. For this reason, and because of the ever-increasing use of automobiles in the area involved, the economic growth aspect of this case is relatively unimportant. Neither the isolated instances of poor service nor defective train equipment sustain protestants contention that petitioner has deliberately discouraged the use of these trains as part of its plan to present a plausible case for abandoning service on the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment on these trains. As to petitioner's failure to advertise the services of these trains, the Commission has repeatedly held that prospective patrons who must be coaxed to use a service evidently have no urgent need for it.

In the light of all these considerations, and for reasons hereinbefore stated, the conclusion is warranted that the continued operation of trains 13 and 14 would constitute a wasteful service and would impose an unjust and undue burden upon the interstate operation of petitioner and upon interstate commerce.

At the hearing, employees of petitioner whose jobs may be adversely affected as a consequence of the discontinuance herein requested that appropriate employee-protective conditions be imposed in the event the trains are discontinued. Although the 10 operating employees on the trains will be entitled to other jobs with equal or better pay, other employees with less seniority may be furloughed, or [fol. 38] temporarily displaced. Three station employees and 2 pullman employees may also be furloughed. For reasons expressed in *Missouri Pacific Railroad Company Discontinuance of Passenger Service*, 312 I.C.C. 105, the examiner concludes that there is no authority under section 13a(2) for the imposition of conditions for the protection of employees adversely affected by the discontinuance of

intrastate trains. It is recognized, however, that the probable adverse effect which the discontinuance of service would have upon employees is a factor to be considered in determining public convenience and necessity. In the instant proceeding such probable adverse effect does not afford a sufficient basis, when considered in connection with all of the facts hereinbefore discussed, to justify the continued operation of the trains.

Contentions of the parties as to either fact or law not specifically discussed herein have been given consideration and found to be without material significance or not justified.

In consideration of the petition here, the evidence adduced at the hearing, the contentions of the parties, and being fully advised in the premises, the examiner is of the opinion and finds that present and future public convenience and necessity permit the Southern Railway Company to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C., and that the continued operation thereof would constitute an unjust and undue burden upon petitioner's interstate operations and upon interstate commerce.

In view of the findings herein, the examiner recommends that the attached order granting the petition be entered.

By Wm. J. Gibbons, Hearing Examiner.

/s/ Wm. J. GIBBONS

(Signature) Wm. J. Gibbons

[fol. 39]

APPENDIX A TO EXHIBIT 1

Finance Docket No. 21563

**SCHEDULES OF TRAINS NOS. 13 AND 16
OPERATING BETWEEN GREENSBORO AND
GOLDSBORO AND POPULATIONS OF
COMMUNITIES SERVED.**

Read Down Daily 16	Miles		Pop.	Read Up Daily 13
A				P
6M10	.0	Lv. Greensboro ...	119,574	Ar. 7M50
f 6:22	8.0	McLeansville ..	300*	f 7:25
6:30	14.7	Gibsonville ...	1,784	f 7:16
6:34	16.7	Elon College ..	1,284	f 7:10
6:50	21.4	Burlington ...	33,199	7:02
f 6:53	23.1	Graham	7,723	f 6:42
6:57	25.8	Haw River ...	1,410	f 6:38
7:10	31.7	Mebane	2,364	6:32
f 7:20	37.0	Elfland	600*	f 6:21
7:25	40.9	Hillsboro	1,349	6:15
f 7:35	46.4	Glenn	n. s.*	f 6:06
7A55	55.0	Ar. Durham	78,302	Lv. 5P55
8M10	55.0	Lv. Durham		Ar. 5M55
f 8:32	68.7	Morrisville ...	222	f 5:19
8:39	72.8	Cary	3,356	5:14
8A55	81.1	Ar. Raleigh	93,931	Lv. 5P00
9M10	81.1	Lv. Raleigh		Ar. 4M30
f 9:18	86.9	Garner	3,451	4:20
9:30	96.1	Clayton	3,302	4:07
f 9:39	103.7	Wilsons Mills	280	f 3:57
10A00	109.2	Ar. Selma	3,102	Lv. 3P50
10M00	109.2	Lv. Selma		Ar. 3M50
f 10:08	111.9	Pine Level ...	833	f 3:30
10:18	117.7	Princeton	948	3:23
f 10:25	123.7	Rose	n. s.*	f 3:15
10A45	129.1	Ar. Goldsboro	28,873	Lv. 3P05
M				M.

f—Flag stop.

n. s.—No population shown.

Source:

Southern Railway System Passenger Train Schedules, folder dated October 30, 1960. Population figures taken from Final 1960 Census, U.S. Bureau of the Census except that those marked with an asterisk were obtained from Rand McNally Commercial Atlas & Marketing Guide, 91st Edition, 1960.

[fol. 40]

APPENDIX B TO EXHIBIT 1

Finance Docket No. 21563

PASSENGERS HANDLED ON TRAIN 13

	On	D/A*	Off	D/A*
Goldsboro, N.C.	989	2.7	—	—
Rose, N.C.	1	—	2	—
Princeton, N.C.	75	.2	130	.4
Pine Level, N.C.	18	—	18	—
Selma, N.C.	340	.9	201	.5
Wilsons Mills, N.C.	29	.1	23	.1
Clayton, N.C.	124	.3	17	—
Garner, N.C.	57	.2	6	—
Raleigh, N.C.	826	2.3	371	1.0
Gary, N.C.	25	.1	70	.2
Durham, N.C.	2929	8.0	453	1.2
Glenn, N.C.	1	—	53	.1
Hillsboro, N.C.	51	.1	266	.7
Efland, N.C.	—	—	12	—
Mebane, N.C.	117	.3	38	.1
Haw River, N.C.	1	—	12	—
Graham, N.C.	4	—	3	—
Burlington, N.C.	1464	4.0	156	.4
Elon College, N.C.	17	—	57	.2
Gibsonville, N.C.	8	—	140	.4
Greensboro, N.C.	—	—	5048	13.8
Total	7076	19.3	7076	19.3

*—Daily Average

[fol 41]

APPENDIX C TO EXHIBIT 1

Finance Docket No. 21563

PASSENGERS HANDLED ON TRAIN 16

	On	D/A*	Off	D/A*
Greensboro, N.C.	5,101	13.9	—	—
McLeansville, N.C.	—	—	2	—
Gibsonville, N.C.	3	—	17	—
Elon College, N.C.	19	.1	51	.1
Burlington, N.C.	112	.3	1,275	3.5
Graham, N.C.	4	—	4	—
Haw River, N.C.	4	—	25	.1
Mebane, N.C.	68	.2	63	.2
Effland, N.C.	14	—	2	—
Hillsboro, N.C.	127	.3	58	.2
Glenn, N.C.	14	—	4	—
Durham, N.C.	775	2.1	2,712	7.4
Morrisville, N.C.	—	—	4	—
Cary, N.C.	14	—	13	—
Raleigh, N.C.	667	1.8	1,274	3.5
Garner, N.C.	49	.1	17	—
Clayton, N.C.	174	.5	374	1.0
Wilsons Mills, N.C.	4	—	30	.1
Selma, N.C.	147	.4	343	.9
Pine Level, N.C.	26	.1	20	.1
Princeton, N.C.	378	1.0	133	.4
Goldsboro, N.C.	—	—	1,279	3.5
Total	7,700	21.0	7,700	21.0

*—Daily Average

[fol. 42]

APPENDIX D TO EXHIBIT 1

Finance Docket No. 21563

Operating Results of Passenger Trains 13 and 16 between
Greensboro, N. C. and Goldsboro, N. C. Year 1960*Revenues:*

Passenger	\$ 21,135
Express	31,630
Miscellaneous	336
Total Revenues	\$ 53,101

Direct Expenses:

Wages, Train and Engine Crews	\$ 89,182
Payroll Tax	5,250
Train Fuel	11,244
Injuries to Persons	500
Damage to Live Stock on R/W	50
Pullman Co. Net Loss	4,226
Engine House Expenses	1,590
Passenger Locomotive Lubricants	1,816
“ “ Other Suppl.	372
“ “ Repairs	21,586
“ Train Cars—CHLW. & Icing	7,164
“ “ —Lubricants	447
“ “ —Other Exps.	942
“ “ —Repairs	13,692
“ “ —Air Cond.	5,060
Goldsboro Union Station	6,940
Rental of Equipment	681
Total Direct Expenses	\$170,742
Direct Expenses of Excess Revenues	\$117,641

[fol. 43]

Recommended by Wm. J. Gibbons,
Hearing Examiner.

/s/ Wm. J. GIBBONS

(Signature) Wm. J. Gibbons

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C. on the day of A. D. 1961.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N. C.

Investigation of the matters and things involved in this proceeding having been referred to and heard by the Hearing Examiner, who has made and filed a report containing his findings of fact and conclusions thereon, which report is made a part hereof, and said proceeding having been duly submitted:

It is ordered, That protestants' motions to dismiss the proceeding be, and they are hereby overruled.

It is further ordered, That the petition of the Southern Railway Company to discontinue the operation of the passenger trains specified in the aforesaid report be, and it is hereby granted.

It is further ordered, That the authority herein granted shall not be exercised prior to the date of service of an order adopting this order as the order of the Commission, or a notice stating that this recommended order has become the order of the Commission.

And it is further ordered, That if the authority granted herein is not exercised within one year from the effective date thereof, it shall be of no further force or effect.

By the Commission, division 3.

HAROLD D. MCCOY,
Secretary.

(SEAL)

Secretary's Certificate to foregoing paper (omitted in printing).

[fol. 44]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND THE INTER-
STATE COMMERCE COMMISSION—Filed October 22, 1962

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled suit for answer to the complaint, state:

I.

Admit the allegations of paragraph 1, except that it is denied that many people in the City and County of Durham use the trains involved in the proceeding before the Commission; further denied that the operations of Research Triangle Institute require the services of said trains; and it is further denied that the officers, directors and employees of Erwin Mills, Inc., use the services of said trains.

II.

Admit the allegations of paragraph 2, except that the defendants aver that the Commission's Examiner found that:

[fol. 45] Other rail passenger service is available at 4 stations now served by trains 13 and 16. At Greensboro, 7 trains of the petitioner in each direction provide daily service, and at Raleigh 6 daily trains of the Seaboard Airline Railroad are available in each direction. The Atlantic Coast Line Railroad operates 8 passenger trains daily in each direction through Selma, and 1 train a day through Goldsboro. These trains

provide through service, including pullman accommodations, to and from, among other points, Washington, D. C., New York City, Atlanta, Ga., Birmingham, Ala., and Richmond, Va.

(Report of the Examiner in Finance Docket No. 21563, pp. 7-8, October 27, 1961). This finding adopted by the Commission, Division 3, in its report dated June 27, 1962.

III.

Admit the allegations of paragraph 3, except that defendants deny that the designated passenger trains afford the only passenger service between the named points. Defendants aver that the Commission found that there is passenger bus transportation between the named points. See page 7 of Examiner's report referred to in II above.

IV.

Admit the allegation of paragraph 4.

V.

Admit the allegations of the first sentence of paragraph 5. Neither admit nor deny the remaining allegations since they call for an opinion regarding matter not subject to the jurisdiction of the Commission.

VI.

Answering the allegations of paragraph 6 defendants admit that the Southern Railway Company is not a financially depressed railroad and that it makes a profit on its [fol. 46] total overall operation; that the passenger trains involved in this proceeding are the only passenger trains operating between Greensboro and Goldsboro. The remaining allegations are denied.

VII.

Deny each and every allegation of paragraph 7.

VIII.

Answering paragraph 8, admit the existence of a lease agreement between the North Carolina Railroad Company and the Southern Railway Company. Neither admit nor deny the remaining allegations of paragraph 8 since they call for an opinion regarding matter not subject to the jurisdiction of the Commission.

IX.

Deny each and every allegation of paragraph 9.

X.

Admit the allegation of paragraph 10.

Further answering the complaint, the defendants aver that the action of the Commission is valid and lawful in all respects. Except as expressly admitted herein, defendants deny each and all of the allegations in said complaint to the extent that they are inconsistent with the averments of this answer and with the order of the Commission dismissing the complaint.

WHEREFORE, the United States of America and the Interstate Commerce Commission pray that the relief prayed for in the complaint be denied and that the complaint be dismissed, and that costs be assessed against the plaintiffs.

Robert W. Ginnane, General Counsel;

H. Neil Garson, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C.;

Attorneys for the Interstate Commerce Commission.

[fol. 47.] Lee-Loevinger, Assistant Attorney General;

John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.;

William H. Murdock, United States Attorney, Greensboro, North Carolina;

Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[fol. 48]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No.

Petition of Southern Railway Company under Section 13a(2) of the Interstate Commerce Act for authority to discontinue the operation of Trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina.

PETITION—Filed April 6, 1961

Comes now Southern Railway Company, a carrier by railroad, subject to Part I of the Interstate Commerce Act, and respectfully requests that the Commission issue an order under Section 13a(2) of the Interstate Commerce Act authorizing the discontinuance of the operation of its Trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina, and in support thereof shows pursuant to the Commission's rules that:

I.

A description of the trains proposed to be discontinued including the name of each station, depot, or facility affected thereby, and the termini between which the trains operate is attached hereto as Exhibit 1, a timetable of the operation of Trains Nos. 13 and 16, which shows the designation of the trains by number, the stations along the route served, time of departure from each station and the time of arrival [fol. 49] at and departure from termini. This exhibit also shows the rail mileage distance from Greensboro to each of the other stations on the line and, with the exception of the small flag stop communities of Glenn and Rose, the population of each station. The communities of Glenn and Rose had no record of population in either the final 1960 Federal Census Report nor in the Rand McNally Commercial Atlas and Marketing Guide for the year 1960.

II.

Statement in Relation to Proposed Discontinuance of Trains

1. The exact corporate name and general office address of petitioner are:

Southern Railway Company
P. O. Box 1808
Washington 13, D. C.

2. The name, title and the office address of counsel to whom correspondence in regard to the petition should be addressed are:

Arthur J. Dixon
General Attorney
P. O. Box 1808
Washington 13, D. C.

3. A complete description of the present service of the trains involved and of the discontinuance or change of operation or service proposed is as follows:

[fol. 50] Petitioner presently operates Trains Nos. 13 and 16 daily between Greensboro and Goldsboro with a five man crew and with a regular consist of a 1500 horsepower road switcher, a passenger coach and a combine car for passengers, baggage and express. Between Greensboro, and Raleigh a sleeping car with roomettes and bedrooms is handled on these trains with a two-man Pullman company crew. The passenger carrying equipment is safe, modern, air-conditioned, has all the usual conveniences and is adequate in all respects for the use to which it is put.

The train crew has been reduced by the elimination of a porter and the consist by an express car, which formerly operated over the entire distance, and a box car handling express from Greensboro to Burlington.

The trains provide rail passenger service to and from and between the stations along the route shown in red coloring on the attached map, marked Exhibit 2. Train No. 16, operating in a generally southeasterly direction, is scheduled to leave Greensboro at 6:10 a.m. and to arrive at Goldsboro at 10:45 a.m. Train No. 13, operating in a generally northwesterly direction, is scheduled to leave Golds-

boro at 3:05 p.m. and to arrive at Greensboro at 7:50 p.m. The rail distance in each direction is 129.1 miles. These trains handle passengers, baggage and express traffic of the REA Express Agency, Inc. These trains also handle a Pullman sleeping car between Raleigh and Greensboro which, in turn, is handled on other passenger trains of petitioner between Greensboro and Washington and on passenger trains of the Pennsylvania Railroad between Washington and New York, in connection with through sleeping [fol. 51] car service between Raleigh and New York. No United States mail has been handled on these trains since September 14, 1957, when the Post Office Department cancelled the transportation of mail by these trains and thenceforth arranged handling of the mail by highway trucks in line with a practice that had become apparent in this area several years previously. Revenues from the transportation of U. S. Mail up to that time had constituted a very important part of the total income earned by Trains Nos. 13 and 16.

Petitioner proposes to discontinue Trains Nos. 13 and 16 entirely and, coincident therewith, to discontinue the operation of the Pullman sleeping car between Greensboro and Washington, D. C. Other passenger trains of petitioner provide adequate daily through Pullman sleeping car service between Greensboro, points south and west thereof and Washington and New York and intermediate points. This service is also available at Greensboro to many of the nearby communities now served by Trains 13 and 16 east of Greensboro.

4. Petitioner seeks authority of this Commission to permanently discontinue the operation of Trains Nos. 13 and 16 for the reasons that the direct expenses of operating them far exceed the revenues produced by the trains, the public generally has abandoned them in preference to other means of travel, all the mail and much of the express formerly transported by these trains has been shifted to over the highway vehicles by the U. S. Post Office and the REA Express Inc., and there is no reasonable prospect of their serving a public need or of their overcoming the great loss incurred to provide the service.

Southern Railway has sustained a wholly distributed [fol. 52] passenger deficit which is shown for the years, 1948-1960 on Exhibit 3: In 1960, this deficit was \$14,669,798 computed by the Interstate Commerce Commission accounting rules. Trains Nos. 13 and 16 contribute substantially to this deficit, and despite the provision of safe, modern railroad passenger facilities in an area which is described as having enjoyed a population and commercial growth in recent years, the public patronage of the trains has progressively declined.

Exhibit 4 attached hereto shows the populations of the several counties traversed by Trains Nos. 13 and 16 as compared with the population of the State of North Carolina and the United States as a whole. It will be noted that between the periods 1950-1960, gains were registered in six of the seven counties. The population of Johnston County decreased by 4.5 percent in the ten year period, while in the remaining six counties, increases ranged from 10.2 percent in Durham County to 29.0 percent in Guilford County. The average population per square mile ranges from a low of 79.1 per square mile in Johnston County to a high of 378.6 per square mile in Guilford County, which is only slightly higher than Durham County with 374.5 per square mile. The average population per square mile for the seven counties is 200.4 as compared with the average for the State of North Carolina of 92.7 per square mile and the United States as a whole of 50.5 persons per square mile. The overall population gain in the seven counties was 20.5 [fol. 53] percent, as compared with the State of North Carolina of 12.2 percent and the United States as a whole of 18.5 percent for the period 1950-1960.

As may be noted from Exhibit 4, twenty-one of the twenty-three communities served by Trains Nos. 13 and 16 have a total population of 386,087 (Glenn and Rose have no known recorded populations). Four of these twenty-one communities (Greensboro, Raleigh, Selma and Goldsboro) with a total population of 245,480, or 63.6 percent of the overall total of 386,087, have other daily rail passenger service available in those communities.

Eleven of the remaining communities are located within from four to fifteen miles of other rail passenger service.

These communities account for 15,760, or 4.1 percent of the total population, and the highway miles to nearest other rail passenger service are shown in parentheses: Dife Level (4), Rose (6), Wilson Mills (5), Garner (6), McLeansville (8), Cary (9), Clayton (12), Princeton (12), Morrisville (14), Gibsonville (15), and Elon College (15).

Four of the remaining communities account for 120,634, or 31.3 percent of the total population, and these communities are located from twenty-one to twenty-three miles distant from other cities where daily rail passenger service is [fol. 54] available. These four with highway distances to other cities having rail passenger service in parentheses are: Burlington (21), Graham (21), Durham (23), and Haw River (23).

The remaining four communities are located within from twenty-seven to thirty-seven miles from nearest cities or towns having rail passenger service. These four account for 4,483, or approximately 1 percent of the total population and are highway distances to other cities with rail passenger service as shown in parentheses: Mebane (27), Glenn (32), Efland (35) and Hillsboro (37).

All communities except the communities of McLeansville, Glenn* and Rose have daily common carrier bus service directly available. These communities are located on black-topped roads of from approximately $\frac{1}{2}$ mile at Glenn to approximately 1.5 miles at McLeansville and one mile at Rose from main highways over which scheduled bus lines operate. It would thus appear that daily scheduled buses serve approximately 99 percent of the area served by Trains Nos. 13 and 16.

With the availability of other modes of transportation, [fol. 55] especially the private automobile, local traffic is rapidly disappearing from the rails, and on this line now consists largely of occasional movements by special groups travelling short distances.

Exhibit 5 attached hereto shows the ratio of persons per registered passenger automobile in the several counties traversed by Trains Nos. 13 and 16 compared with the

* Glenn was formerly station for University of North Carolina which is now served by buses to and from Chapel Hill.

average for the State of North Carolina. It will be noted that the range is from a low of one passenger automobile for every 3.9 persons in Orange County to a high registration of one passenger automobile for every 2.6 persons in Guilford and Alamance Counties. The average for the seven counties is one registered passenger automobile for every 2.9 persons as compared with an average for the State of North Carolina as a whole of one registered passenger automobile for every 3.3 persons. It is thus apparent that the average ratio of registered passenger automobiles to population in the seven county area is better than one automobile per family.*

Exhibit 6 attached hereto shows the ratio of persons to registered passenger automobiles in the principal cities and towns of the seven counties traversed by Trains Nos. 13 and 16. Chapel Hill, in Orange County, is the only city [fol. 56] listed that is not directly served by Trains Nos. 13 and 16. It will be noted from this exhibit that the ownership of registered passenger automobiles in the principal cities served by Trains Nos. 13 and 16 is quite high, with an average registration of one passenger automobile for every 2.1 persons in those cities and towns as compared with an average for the seven counties of one registered passenger automobile for every 2.9 persons and an average for the State of North Carolina as a whole of one registered passenger automobile for every 3.3 persons, as shown by Exhibit 5.

Interest in long distance rail travel has become largely limited to a few persons from Durham who claim they dislike air travel.

In the prevailing circumstances, which include the high incidence of private vehicles shown above as well as the availability of other common carrier service shown below, the population, which formerly would support much railroad passenger service no longer will support Trains Nos. 13 and 16 and continuance of the operation at the huge loss indicated serves no public need, constitutes an economic waste which deprives petitioner of its property and casts

* According to the U. S. Census Bureau, the average family in the U. S. based upon the 1960 Census, consisted of 3.68 persons.

a burden on interstate operations of the petitioner and commerce generally.

[fol. 57] 5. The names of all railroads interchanging passengers with the subject trains and the points of such interchange are listed below and are illustrated by reference to Exhibit 7, which is a map showing possible points of interchange of passengers between Trains Nos. 13 and 16 and rail passenger trains of other rail lines at Raleigh, Selma and Goldsboro as well as petitioner's other rail passenger trains through Greensboro, N. C. As indicated on this exhibit, possible points of interchange are:

- (1) *At Greensboro:* With other passenger trains of Southern Railway Company operating between Washington and Atlanta, Birmingham and New Orleans, and between Greensboro, Winston-Salem and Asheville.
- (2) *At Raleigh:* With passenger trains of the Seaboard Air Line Railroad operating between Richmond, Virginia and Florida points, and between Richmond, Virginia, Atlanta and Birmingham, and between Portsmouth, Virginia and Raleigh.
- (3) *At Selma, N. C.:* With Atlantic Coast Line Railroad passenger trains operating between Richmond, Virginia and Florida points.
- (4) *At Goldsboro, N. C.:* With Atlantic Coast Line Railroad trains operating between Rocky Mount, N. C. [fol. 58] and Wilmington, N. C., connecting with other passenger trains of the Atlantic Coast Line Railroad at Rocky Mount operating between Richmond and Florida points.

Interchange of passengers between Trains Nos. 13 and 16 and other rail lines at Raleigh, Selma or Goldsboro is negligible. There is some interchange of passengers at Greensboro between petitioner's other passenger trains and Trains Nos. 13 and 16. The New York-Raleigh sleeping car (handled on Trains Nos. 13 and 16 between Greensboro and Raleigh) is coupled on and off other passenger trains of

petitioner (operating between Greensboro and points south and west thereof and Washington) at Greensboro. Pullman passengers from or to points south or west of Greensboro detrain at Greensboro and all coach passengers to or from other trains detrain and board Trains Nos. 13 and 16 at Greensboro.

6. A description of other common carrier service, including service of the subject carrier, of the same kind rendered by the trains involved, between and at the points described in the petition and other common carrier service available in the immediate territory follows:

Trains Nos. 13 and 16 are the last of three pairs of passenger trains formerly operated by petitioner on the Greensboro-Goldsboro line. Discontinuance of the other two pairs of trains formerly operating on this line were authorized by the North Carolina Utilities Commission following application to and formal hearings held by that Commission. Trains Nos. 21 and 22 were discontinued on September 3, 1954, and Trains Nos. 111 and 112 were discontinued May 2, 1958.

While Trains 13 and 16 are the last trains offering rail passenger service between certain intermediate points on the line, north-south rail passenger service is available by other passenger trains at four communities served by Trains Nos. 13 and 16 (Greensboro, Raleigh, Selma and Goldsboro).

Attached hereto as Exhibit 8 is a timetable showing the operation by petitioner of five daily passenger trains in each direction through Greensboro. All five of these trains in each direction handle coaches between Greensboro and points south thereof and Washington, D. C. Four of these five trains in each direction handle Pullman sleeping cars between such points as New Orleans-Washington and New York; New Orleans-Birmingham-Atlanta-Washington-New York; Augusta-Columbia-Washington and New York; Asheville-Washington-New York; Winston-Salem-Washington and New York and between Greensboro-Washington and New York. Trains Nos. 47 and 48 handle through coaches between New York and New Orleans; Washington and [fol. 60] New Orleans; Washington-Birmingham and between New York and Birmingham.

Attached hereto as Exhibit 9 is a timetable showing the operation by petitioner of two trains daily in each direction between Greensboro, Winston-Salem and Asheville. Trains Nos. 15 and 16 handle Pullman sleeping cars (between Greensboro and Asheville) and Train No. 21 handles a Pullman sleeping car (Greensboro-Winston-Salem) in connection with through sleeping car service between New York and other Eastern cities and Greensboro and Winston-Salem. (This sleeping car returns on Train No. 16 to Greensboro.) All of these trains handle coaches between Greensboro and Asheville and Train No. 22 (Asheville-Greensboro) handles coaches only. Trains Nos. 21 and 22 also connect with other trains of petitioner at Asheville, operating between Charleston and Cincinnati.

Attached hereto as Exhibit 10, is a timetable showing schedules of Seaboard Air Line Railroad passenger trains through Raleigh. Four of these trains in each direction provide through service between New York, Washington and Florida points.

Attached hereto as Exhibit 11 is a timetable showing the operation of Seaboard Air Line trains through Raleigh. In connection with consolidations at Hamlet with New York-Florida trains, three schedules are offered daily in each direction between New York, Washington, Richmond, Atlanta and Birmingham. Trains 33 and 34 handle sleeping [fol. 61] cars and coaches while Trains Nos. 3 and 4 and Trains Nos. 5 and 6 handle coaches only. This exhibit also shows the schedules of Seaboard Air Line Railroad Trains Nos. 17 and 18, operating between Raleigh and Portsmouth. Trains Nos. 17 and 18 handle sleeping cars and coaches in through service between Jacksonville and Portsmouth and Atlanta and Portsmouth.

As is shown by Exhibit 12 attached hereto, the Atlantic Coast Line Railroad operates five trains daily in each direction through Selma, N. C. (two in each direction do not stop at Selma). Four of these trains in each direction provide through sleeping car and coach service between New York, Washington and Florida points. Trains Nos. 375 and 376 handle coaches only.

As is shown by Exhibit 13 attached hereto, the Atlantic Coast Line Railroad operates one train daily in each direc-

tion between Wilmington, N. C. and Rocky Mount, N. C., via Goldsboro, in connection with through Pullman sleeping car service between Wilmington, Washington and New York. These trains handle coaches between Wilmington and Rocky Mount and through coach passengers to and from points north of Rocky Mount board or detrain from connecting trains of the Atlantic Coast Line at Rocky Mount handling through coaches to and from Washington and New York and between those points and Florida points.

[fol. 62] Exhibit 14 attached hereto shows that the Carolina Trailways operate 15 bus schedules daily in each direction between Greensboro, Durham and Raleigh. Thirteen of these schedules in each direction (with one additional westbound schedule daily) also serve Burlington. Eight of the fifteen schedules daily in each direction also serve Graham (with one additional schedule daily eastbound); five of the fifteen daily schedules in each direction serve Gibsonville and Elon College; four of the fifteen daily schedules in each direction also serve Haw River, Mebane, Effland and Hillsboro (with one additional schedule eastbound through those communities). Three of the fifteen daily schedules in each direction also serve Morrisville and Cary. A number of additional bus schedules operate daily except Sundays and holidays between Raleigh and Durham. It will be noted that of the fifteen daily schedules in each direction between Greensboro and Raleigh, ten eastbound and nine westbound schedules operate in express service between such points as Norfolk-Birmingham and Dallas, Tex.; Norfolk-Charlotte; Norfolk-Memphis; Norfolk-Denver; Raleigh-Oklahoma City; Beaufort-Asheville; Norfolk-Atlanta; Norfolk-Montgomery-Dallas; Raleigh-Asheville-New York and Raleigh-Atlanta.

Exhibit 15 attached hereto shows the Atlantic Greyhound Lines operating seven schedules daily in each direction between Raleigh and Goldsboro. Six of these seven schedules [fol. 63] in each direction serve Clayton, Selma, Pine Level and Princeton as intermediate points. Three of the seven schedules daily in each direction serve the intermediate point of Wilsons Mills. Of these seven daily schedules buses in each direction, it will be noted, that the operations are not limited to competition with Trains Nos. 13 and 16 be-

tween Raleigh and Goldsboro and the intermediate points. Four south (eastbound) buses operate in through service between such points as Raleigh-Savannah; Cincinnati-Beaufort; Winston-Salem-Wilmington, N. C. and Detroit to Goldsboro. Four north (westbound) buses operate between such points as Wilmington, N. C. to Detroit; Beaufort, N. C. to Cincinnati; Wilmington, N. C. to Winston-Salem and Savannah to Raleigh.

Attached hereto as Exhibit 16 is a timetable showing (at Table 8110) the schedules of Trailways System buses. One through bus is operated daily New York to Jacksonville via Raleigh; one through bus is operated daily New York to Atlanta via Raleigh; one through bus is operated daily New York to Tampa via Raleigh; one through bus is operated daily Philadelphia to Myrtle Beach via Raleigh; three buses are operated daily Boston to Raleigh; one bus is operated daily New York to Raleigh for connections at Raleigh with buses for Fayetteville and Augusta, Ga., and Jacksonville. In the reverse direction, the Trailways Bus System operates [fol. 64] one through bus daily Miami to New York via Raleigh; one through bus daily Jacksonville to New York via Raleigh; one through bus daily Durham to Boston via Raleigh; one through bus daily Fayetteville to New York via Raleigh; one through bus daily Chapel Hill to Boston via Raleigh; two buses daily Raleigh to New York and one bus daily Raleigh to Boston. Other daily schedules show two buses Dallas to Raleigh; one bus Anderson to Raleigh; one bus Dallas to Norfolk via Raleigh and one bus from Columbus to Raleigh.

Exhibit 17 attached hereto at Table 8022 shows the Trailways Bus System operates via Raleigh, Durham, Chapel Hill, Burlington and Greensboro the following through bus service:

One daily—Norfolk-Raleigh-Chattanooga, Memphis and Denver

One daily—Raleigh-Salisbury

One daily—Raleigh-Asheville

One daily—Raleigh-Chattanooga-Memphis and Oklahoma City

Two daily—Norfolk-Salisbury

One daily—Norfolk-Knoxville and Memphis,

and in the reverse direction:

One daily—Knoxville-Norfolk
 One daily—Denver-Memphis-Knoxville-Norfolk
 Four daily—Salisbury-Norfolk
 One daily—Salisbury-Raleigh
 One daily—Asheville-Raleigh
 One daily—Memphis-Chattanooga-Norfolk

[fol. 65] Attached hereto as Exhibit 18 is a timetable showing the bus schedules operated by the Seashore Transportation Company and connecting bus lines. At Table 3425 of this exhibit it will be noted that the Seashore Transportation Company, in conjunction with Trailways and Greyhound Lines, operates one through bus daily in each direction between Cincinnati, Ohio and Beaufort, N. C., via Greensboro, Raleigh and Goldsboro; one through bus daily, Charlotte to Beaufort via Greensboro, Raleigh and Goldsboro; one through bus daily, Beaufort to Asheville via Goldsboro, Raleigh and Greensboro. The Seashore Transportation Company operates other daily schedules between Goldsboro and Rocky Mount, N. C. and between Goldsboro and Beaufort, N. C.

Among other bus service in the general area served by Trains Nos. 13 and 16, the Queen City Trailways operates one bus daily in each direction between Durham and Wilmington, N. C. via Chapel Hill and Fayetteville. Queen City Trailways also operates one bus daily in each direction between Raleigh and Myrtle Beach, S. C. via Garner as part of through Philadelphia-Myrtle Beach service.

The Carolina Trailways operate two buses daily in each direction between Raleigh and Charlotte via Cary, with connections at Raleigh with buses from and to Norfolk or Richmond and connections at Charlotte for Atlanta or Asheville.

As is shown by Exhibits 14, 15, 16, 17 and 18, there is [fol. 66] ample local and long distance bus service operating in the area served by Trains 13 and 16. All communities served by Trains Nos. 13 and 16 are served by daily common carrier bus service except the small communities of McLeansville, Glenn and Rose but these communities are

located only short distances off the main highways over which the scheduled buses operate as shown above at page 7.

As is shown by Exhibit 19 attached hereto, Eastern Air Lines operates daily first class flights between Raleigh-Durham Airport and a wide variety of other cities, such as New York, Washington, Philadelphia, Baltimore, Richmond, Chicago, Pittsburgh, Detroit and Atlanta, among others. This exhibit shows that Eastern Air Lines operates ten flights daily, except Saturdays and Sundays, between Raleigh-Durham Airport and New York. Eight flights operate on Saturdays and nine operate on Sundays. Six flights are operated daily, except Saturdays in the opposite direction between New York and Raleigh-Durham. Four of these flights operate on Saturdays. Eight flights are operated daily, except Saturdays and Sundays, between Raleigh-Durham Airport and Washington, D. C. Six of these flights operate on Saturdays and seven operate on Sundays. Seven flights are operated daily, except Saturdays, in the opposite direction, between Washington and Raleigh-Durham. Four of these flights operate on Saturdays. Other daily first-class flights offered at Raleigh-Durham Airport by Eastern Air Lines are: One flight daily in each direction between [fol. 67] Raleigh-Durham and Chicago. One flight daily, except Saturdays, in each direction between Raleigh-Durham, Pittsburgh and Detroit. Two flights daily to Columbia, S. C., and three flights daily in the reverse direction. Four flights daily Raleigh-Durham to Atlanta and five returning daily. Eastern Air Lines also operates from Raleigh-Durham Airport one flight daily, except Saturdays, to Chattanooga, Nashville and Louisville, with one flight returning from those cities to Raleigh-Durham daily.

As is shown by Exhibit 20, Capital Airlines offers one flight daily in each direction between New York, Raleigh-Durham, Atlanta and New Orleans.

Capital Airlines also offers one flight daily, except Saturdays, between Washington, D. C., Norfolk, Raleigh-Durham, Greensboro-High Point and Knoxville, with one flight from Knoxville in the reverse direction daily. At Knoxville connections may be made with flights to and from Huntsville, Ala.

Exhibit 21 attached hereto shows Piedmont Airlines operates one flight daily in each direction between Wilmington, N. C., Raleigh-Durham, Greensboro-High Point, Winston-Salem and Lexington, Ky. Piedmont Airlines also operates one flight daily in each direction between Fayetteville, Raleigh-Durham, Greensboro-High Point, Winston-Salem [fol. 68] and Cincinnati, Ohio. In addition, this exhibit also shows that Piedmont Airlines operates one flight daily, except Saturdays and Sundays, in each direction between New Bern, N. C.-Raleigh-Durham, Greensboro-High Point, Roanoke and Columbus, Ohio. The flight from New Bern terminates at Roanoke on Saturdays and the flight from Columbus terminates at Roanoke on Sundays.

Exhibit 22, attached hereto, shows a comparison of air line traffic handled out-bound* via scheduled air lines from Greensboro-High Point and Raleigh-Durham airports between the years 1949 and 1959. It will be noted that the number of aircraft departures at Greensboro-High Point increased from 9,854 in 1949 to 12,731 in 1959, or 29.2 percent. The number of passengers departing from that airport increased from 25,479 in 1949 to 92,721 in 1959, an increase of 263.9 percent. Average number of passengers boarding departing planes increased from 2.6 per plane in 1949 to 7.3 in 1959. Air mail tons placed aboard departing planes increased by 102.3 percent in the period 1949-1959. Tons of cargo placed aboard departing planes increased by 209.1 percent in the period 1949-1959. Increases in all categories of air line traffic were also registered at Raleigh-Durham Airport between 1949 and 1959. Aircraft departures increased from 9,603 in 1949 to 11,480 in 1959, an increase of 19.5 percent. Number of passengers boarding departing planes increased from 38,791 in 1949 to 131,644 in 1959, an increase of 239.4 percent. Average number of passengers boarding each departing plane increased from four persons per plane in 1949 to 11.4 persons in 1959. Air mail placed aboard departing planes increased from 87.1 tons in 1949 to 151.8 tons in 1959, an increase of 74.3 percent. Air cargo placed aboard departing planes increased

* Records are based on revenue traffic enplaning at each airport. To avoid duplications arrival traffic is not included.

from 134.1 tons in 1949 to 361.2 tons in 1959, an increase of 169.4 percent.

Attached hereto as Exhibit 23 is a map showing highway distances from various communities in the general area served by Trains Nos. 13 and 16 to the Raleigh-Durham Airport. It will be noted that the City of Durham is located 12.5 miles from the airport and that the City of Raleigh is located 13.5 miles from the airport, both cities being accessible to the airport over U. S. Highway No. 70, a modern four-lane highway. The Raleigh-Durham Airport is also available to communities within a wide area, including a number served by Trains Nos. 13 and 16, other than Durham and Raleigh. The City of Chapel Hill is located 16.5 miles from Raleigh-Durham Airport via North Carolina State Highway No. 64 (12.5 miles) and a paved, access road (4.0) between Nelson and the airport. The Research [fol. 70] Triangle Park is located approximately six miles from the airport. Morrisville, a station served by Trains 13 and 16, is located 4.5 miles from the Raleigh-Durham Airport.

Another important commercial airport serving the general area served by Trains Nos. 13 and 16 is the Greensboro-High Point Airport which is located approximately nine miles west of Greensboro. This airport is also available to many communities within a wide area, including a number of communities served by Trains Nos. 13 and 16.

The REA Express Agency, Inc., which utilizes Trains Nos. 13 and 16 for the transportation of express traffic, also utilizes highway trucks for the transportation of express to and from a number of communities served by Trains Nos. 13 and 16. Express traffic is also handled by other passenger trains at Greensboro, Raleigh, Selma and Goldsboro.

The various bus lines operating in the area served by Trains Nos. 13 and 16, besides handling passengers and baggage, also offer a limited express service.

The air lines serving the area served by Trains Nos. 13 and 16 also, in addition to handling passengers and [fol. 71] baggage, transport air express and air cargo.

As is shown by Exhibit 2 attached hereto, the line of Southern Railway Company between Greensboro and Golds-

boro over which Trains Nos. 13 and 16 operate, is closely paralleled by U. S. Highway 70. Other U. S. and North Carolina highways parallel and intersect the line of rail road at a number of points. Practically all of the communities served by Trains Nos. 13 and 16 are located on through highways and the remainder have easy access to through highways from short distances over paved, all-weather roads. As indicated by this Exhibit 2, Federal Interstate Highway No. 85 follows the route of U. S. Highway 70 between Greensboro and a point south of the village of Effland and from that point to a point just west of Durham will be newly located. When completed, Federal Interstate Highway No. 85 is expected to shorten the highway distance between Durham and Greensboro by several miles less than the present 56-mile distance.

A comparison of the rail distances between petitioner's lines and those of rail competitors from certain stations along the route of Trains Nos. 13 and 16 and Washington, D. C. and points north thereof, is most revealing: the rail mileage via Southern Railway Company, Goldsboro to Washington, D. C. is 413 miles, whereas the distance between those points via Atlantic Coast Line Railroad-RF&P is 277.5 miles; the rail distance between Selma, N. C. and Washington via Southern Railway Co. is 393.1 miles, whereas the distance between those points via ACL-RF&P is 279.5 miles; the rail distance via Southern Railway Co., [fol. 72] Raleigh to Washington, D. C., is 365.0 miles whereas the rail distance via Seaboard Air Line Railroad-RF&P is 275.4 miles.

7. The traffic transported on the trains involved during 1959 and 1960 is shown in an on-and-off statement marked Exhibit 24 and pertinent statistics relating to the passenger use of these trains are presented in Exhibit 25 for the same two years. Exhibit 26 offers an historical account of passenger statistics on these trains from 1948 through 1960. At the time these exhibits were prepared, more recent data were not available.

Exhibit 24, consisting of four sheets, is a series of statements showing the number of revenue passengers getting on and off Trains 13 and 16 at each of the stations for the

calendar years 1959 and 1960. This information was obtained from the tickets lifted by the conductors and turned in to the Auditor of Passenger Accounts. The figures shown for Greensboro include passengers originating or continuing trips beyond Greensboro via Southern Railway, as well as those originating and terminating at Greensboro. It will be noted from the exhibit that most of the use of the trains was from the stations of Goldsboro, Raleigh, Durham and Burlington going to Greensboro and beyond. In the reverse direction, it was from beyond Greensboro and Greensboro to the same places.

Exhibit 25, consisting of two sheets, shows for the years 1959 and 1960, with respect to Trains 13 and 16, the number [fol. 73] of trips operated, trip mileage, total train miles operated, total number of revenue passengers carried, total revenue passenger miles and total passenger revenue. It may be noted that for both trains for the year 1960, the average number of passengers per trip was 20.2; average miles per passenger, 46.8; average revenue per passenger, expressed in cents, 143.036; average passenger revenue per train mile, also expressed in cents, 22.382; and the average passenger miles per train mile, 7.33. The last figure, 7.33, was the average number of passengers for the entire trip at a time when the train crew consisted of six members and the Pullman crew of two for part of the distance.

Exhibit 26 is a statement of the traffic statistics for Trains 13 and 16 for the years 1948 through 1960. It shows the number of trips, the number of revenue passengers, the passenger revenue, the average number of revenue passengers per trip and the average passenger revenue per trip. It may be noted that the number of passengers decreased in this period from 56,739 to 14,776, or 73.96 percent. The passenger revenue decreased from \$60,534 to \$21,135, or 65.09 percent. The average number of passengers per trip decreased from 77.51 to 20.19, or 73.95 percent. The average passenger revenue per trip decreased from \$82.70 to \$28.87, or 65.09 percent.

8. The financial results of operating the trains involved during 1959-1960, segregated by trains, are shown on Ex-[fol. 74] hibits 27 and 28. Exhibit 29 shows the feeder value of the trains sought to be discontinued to the Southern

Railway System for the same years. Later figures were not available at the time of preparing this petition.

Exhibit 27 is the operating results for Trains 13 and 16 for the year 1959. This is a single sheet exhibit which has been prepared in the same manner, explained below, as the following exhibit marked "28", except that the showings on 27 are in total rather than by individual months and the detailed schedules, attached to No. 28, have not been appended to Exhibit 27. For the year 1959, the expenses of operating Trains 13 and 16 exceeded the revenue in the amount of \$122,837.

Exhibit 28, consisting of 10 schedules, covers the operations of Trains 13 and 16 for the year 1960. The revenues and expenses are computed in accordance with the requirements of the National Association of Railroad and Utilities Commissioners' formula. This formula was recommended by the NARUC September 23, 1953, and has been used by our company and other carriers in passenger train hearings before the various state regulatory bodies. For the year 1960, the expenses exceeded the revenues in the amount of \$117,641 or it cost the Company \$3.22 to earn a revenue dollar. The items of revenues and expenses shown on Exhibit 28 are explained as follows:

[fol. 75] *Operating Revenues*

(1) A/C 102—Passenger

Tickets lifted by conductor are punched into IBM cards showing station to station, class of passage and other information. These cards are processed through the computer, which is programmed to compute the passenger revenue based on authorized rate for class of passage.

(2) A/C 107—Express

Revenue per carfoot mile for the company was developed by dividing total revenue received from the REA by the total carfoot miles. The resulting revenue per carfoot mile was applied to the carfoot miles applicable to Trains 13 and 16.

(3) A/C 108—Miscellaneous

Represents revenues received for the handling of newspapers and movement of terminal cases.

Expenses

(1) A/C 392-401—Wages of train and engine crews

From time returns of the members of the crews operating these trains plus vacation allowances.

(2) A/C 532—Payroll taxes

Payments made to the railroad retirement board for retirement and unemployment benefits for the members of the crews.

(3) A/C 394—Train Fuel

Actual consumption of fuel by these trains was determined by a fuel test and this consumption applied to the company average cost per gallon.

(4) A/C 420—Injuries to Persons

Actual payments made to persons injured in the operation of these trains.

[fol. 76]

(5) A/C 417—Damage to Live Stock on Right-of-Way

Actual payments made for damage caused by operating Trains 13 and 16.

(6) A/C 403—Pullman Company Net Loss

This represents the excess of expenses over revenues for this line as billed by the Pullman Company. The line operates from Washington, D. C. to Raleigh, N. C., and the figure shown is the proportion applicable to Trains 13 and 16 between Greensboro and Goldsboro.

(7) Locomotive Expenses—

A/C 400—Engine House

A/C 398—Lubricants

A/C 399—Other Supplies

A/C 311—Repairs

The average cost per diesel unit mile for the Company was determined for each of these items and these unit costs applied to the diesel unit miles operated in Trains 13 and 16.

(8) Passenger Car Expenses—

A/C 402—CHLW & Icing

A/C 402—Lubricants

A/C 402—Other Expenses

A/C 402—Air Conditioning

A/C 317—Repairs

The average cost per passenger car mile for the company was determined for each of these items and this cost applied to the car miles made by trains 13 and 16. In our accounting procedure Acct. 402—"Train Supplies & Expenses" is broken down between CHLW cars, lubricants, other expenses and air conditioning.

(9) Joint Facility Expenses

This represents the savings that would have been made had Trains 13 and 16 not operated during this period. Total expenses at Goldsboro Union Station apportioned to the user roads on the basis of the number of cars in and out of the station for each road.

[fol. 77]

(10) Rental of Equipment

Payment made to foreign lines for use of passenger equipment; no payment made to Southern System lines are included.

Exhibit 29 is a statement for the years 1959 and 1960 of the revenue accruing to the Southern Railway System for the off-line portion of the trips made by passengers using Trains 13 and 16. These revenues have been reduced by the amount of 50 percent, representing an estimate of the cost of producing the revenue accepted by this Commission in abandonment and discontinuance cases. In the pres-

ent instance, the usual expenses of producing and transporting passengers could be augmented by the Pullman net loss on the line between Greensboro and Washington (\$14,794 in 1960) which must be paid by Southern Railway since in the event of discontinuance of Trains 13 and 16, the Pullman car would be removed over the entire distance between Washington and Raleigh, other Pullman service being adequate for the main line trains between Greensboro and Washington.

9. Exhibit 30 is the balance sheet of the Southern Railway Company as of December 31, 1960, and is taken from the Company's Annual Report to the Interstate Commerce Commission.

Exhibit 31 is the Southern Railway Company income account for the years 1959 and 1960 as reported to the [fol. 78] I.C.C. A statement for any portion of the current year was not available at the time of preparing this petition.

10. Attached hereto and marked Exhibit 2 is a map setting forth in red coloring the line of railroad over which Trains Nos. 13 and 16 operate between Greensboro and Goldsboro, inclusive, which shows the geographic situation of the line. All stations served by Trains Nos. 13 and 16 are shown on this map.

III.

Application for discontinuance of Trains Nos. 13 and 16 was filed with the North Carolina Utilities Commission on July 8, 1959. Following a hearing on October 6-9, 1959, that Commission issued its order dated January 20, 1960, which, with one dissenting opinion, denied the application. Subsequently, the order of the Commission was upheld in the Superior Court of Wake County and the Supreme Court of North Carolina.

Filed only with the original of this petition to the Interstate Commerce Commission is a copy of the record made before the North Carolina Utilities Commission, including copies of the application to the North Carolina Utilities [fol. 79] Commission, transcript of oral hearing and decision and orders.

For the convenience of this Commission there is also filed only with the original of this petition copies of the orders of the Superior Court of Wake County and of the North Carolina Supreme Court.

Wherefore, petitioner respectfully prays that this Commission issue an order under Section 13a(2) of the Interstate Commerce Act authorizing Southern Railway Company to permanently discontinue the operation of its passenger Trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina.

Southern Railway Company, By: D. W. Brosnan,
P. O. Box 1808, Washington 13, D. C.

April , 1961.

[fol. 80]

Certificate

D. W. Brosnan hereby certifies that he is Executive Vice President of Southern Railway Company, Petitioner herein; that he has been authorized by proper corporate action on the part of such Petitioner to execute and file with the Interstate Commerce Commission the foregoing Petition; that he has carefully examined all of the statements referred to in said Petition and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

D. W. Brosnan

Dated this day of April, 1961.

SOUTHERN RAILWAY COMPANY

**SCHEDULES OF TRAINS NOS. 13 AND 16 OPERATING
BETWEEN GREENSBORO AND GOLDSBORO**

<u>Read Down</u> <u>Daily</u> <u>16</u>	<u>Miles</u>	<u>Pop.</u>	<u>Read Up</u> <u>Daily</u> <u>13</u>
6A10	.0	Lv. Greensboro....119,574	Ar. 7P50
f 6:22	8.0	McLeansville.. 300*	f 7:25
6:30	14.7	Gibsonville .. 1,784	f 7:16
6:34	16.7	Elon College.. 1,284	f 7:10
6:50	21.4	Burlington.... 33,199	7:02
f 6:53	23.1	Graham..... 7,723	f 6:42
6:57	25.8	Haw River..... 1,410	f 6:38
7:10	31.7	Mebane..... 2,364	6:32
f 7:20	37.0	Efland..... 500*	f 6:21
7:25	40.9	Hillsboro..... 1,349	6:15
f 7:35	46.4	Glenn..... n. s.*	f 6:06
7A55	55.0	Ar. Durham..... 78,302	Lv. 5P55
8M10	55.0	Lv. Durham.....	Ar. 5M55
f 8:32	68.7	Morrisville... 222	f 5:19
8:39	72.8	Cary..... 3,356	5:14
8A55	81.1	Ar. Raleigh..... 93,931	Lv. 5P00
9M10	81.1	Lv. Raleigh.....	Ar. 4M30
f 9:18	86.9	Garner..... 3,451	4:20
9:30	96.1	Clayton..... 3,302	4:07
f 9:39	103.7	Wilsons Mills. 280	f 3:57
10A00	109.2	Ar. Selma..... 3,102	Lv. 3P50
10M00	109.2	Lv. Selma.....	Ar. 3M50
f 10:08	111.9	Pine Level.... 833	f 3:30
10:18	117.7	Princeton..... 948	3:23
f 10:25	123.7	Rose..... n.s.*	f 3:15
10A5	129.1	Ar. Goldsboro..... 28,873	Lv. 3P05

f - Flag stop.
n.s. - No population shown.

Source:

Southern Railway System Passenger Train Schedules, folder, dated October 30, 1960. Population figures taken from Final 1960 Census, U.S. Bureau of the Census except that those marked with an asterisk * were obtained from Rand McNally Commercial Atlas & Marketing Guide, 91st. Edition, 1960.

[fol. 81]

EXHIBIT 1 TO PETITION

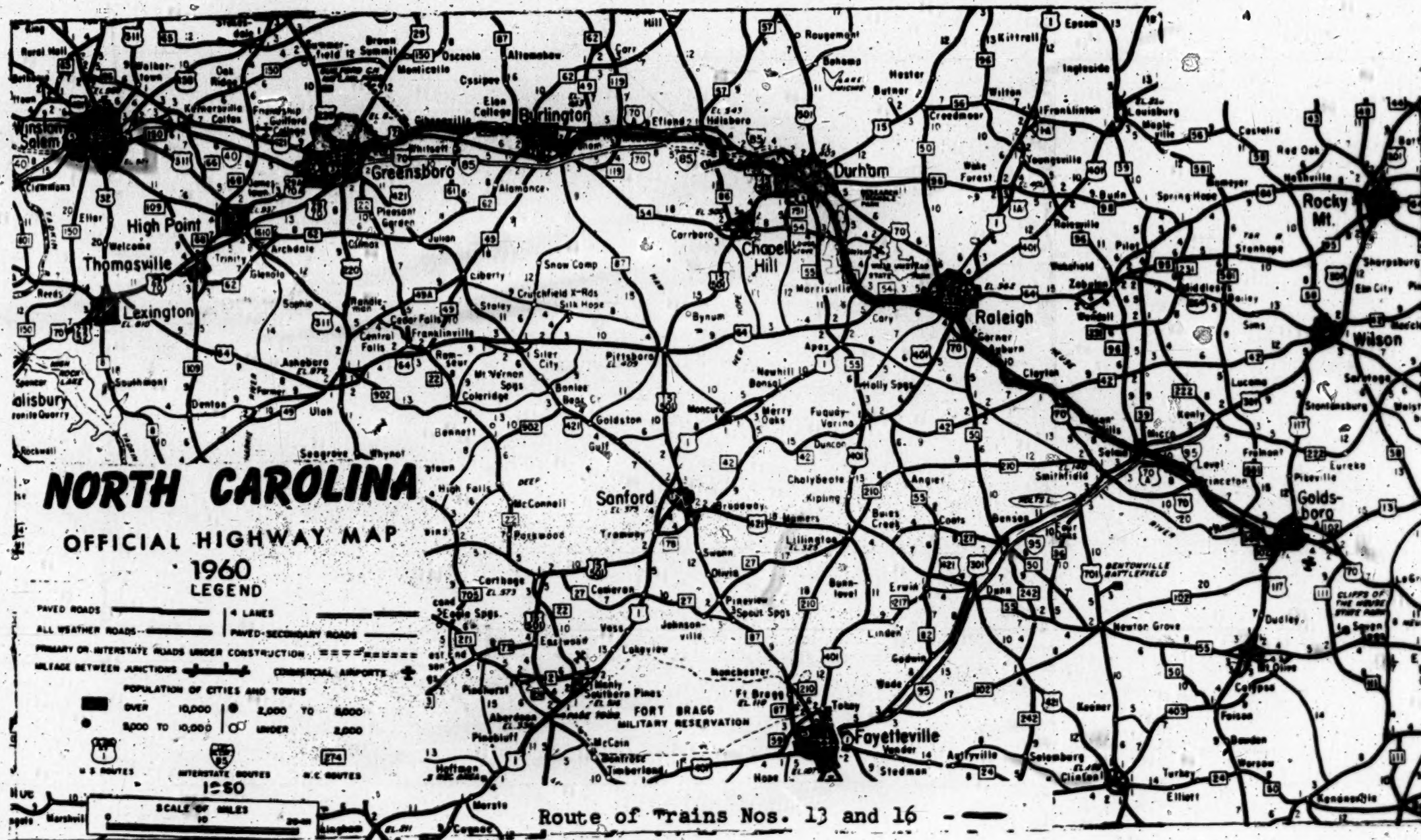


EXHIBIT 3 TO PETITION

SOUTHERN RAILWAY COMPANY

Passenger Service Operations

Passenger Service Operating Revenues	Passenger Operating Expenses	Taxes	Equipment and Joint Facility Rents	Total Operating Expenses, Taxes and Rents Col. 3+Col. 4 +Col. 5	Net Railway Operating Income Col. 2-Col. 6	Passenger Train Miles	Average Revenue Per Train Mile Col. 2+Col. 8	Average Cost Per Train Mile Col. 6+Col. 8	Average Cost Per \$1.00 of Revenue Col. 6+Col. 2
(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
\$35,003,784	\$42,282,209	\$3,659,878	\$ 274,177	\$46,216,264	D \$11,216,486	10,619,081	\$3.30	\$4.35	\$1.32
32,387,779	42,490,615	3,803,482	31,145	46,325,242	D 13,937,463	10,229,625	3.17	4.53	1.43
30,276,601	41,127,072	1,785,687	212,710	43,125,469	D 12,848,868	9,833,963	3.08	4.39	1.42
36,454,296	46,164,166	3,404,966	1,032,435	50,601,567	D 14,147,271	10,065,700	3.62	5.03	1.39
36,568,817	46,301,300	3,629,465	4,556	49,935,321	D 13,366,504	9,612,451	3.80	5.19	1.37
34,037,739	45,635,504	3,616,068	Cr. 497,175	48,754,397	D 14,716,658	8,795,542	3.87	5.54	1.43
32,372,126	42,429,763	3,550,075	Cr. 262,712	45,717,126	D 13,345,000	8,359,786	3.87	5.47	1.41
30,341,727	41,960,451	3,516,310	129,538	45,606,299	D 15,264,572	7,808,349	3.89	5.84	1.50
29,437,842	42,662,881	3,659,369	294,489	46,616,739	D 17,178,897	7,411,851	3.97	6.29	1.58
28,323,631	43,299,978	3,687,569	270,133	47,257,680	D 18,934,049	7,034,036	4.03	6.72	1.67
26,574,695	41,214,889	3,529,697	Cr. 674,858	44,069,728	D 17,495,033	6,637,956	4.00	6.64	1.66
26,385,737	38,805,530	3,667,408	Cr. 498,852	41,974,086	D 15,588,349	6,394,140	4.13	6.56	1.59
26,366,269	37,894,275	3,697,020	555,228	41,036,067	D 14,669,798	6,190,020	4.26	6.63	1.56

* Mail Pay of \$2,859,874 - Applicable to years 1948 and 1949 which was audited in 1950 has been included in appropriate years, notes deficit.

* Annual Reports to the ICC and Company Records.

**POPULATIONS OF COUNTIES TRAVERSED
BY TRAINS NOS. 13 AND 16 COMPARED
WITH THE STATE OF NORTH CAROLINA
AND THE UNITED STATES**

POPULATION

<u>County</u>	<u>1960</u>	<u>Per Square Mile</u>	<u>1950</u>	<u>Percent Increase or Decrease 1950-1960</u>
Guilford	246,520	378.6	191,057	29.0
Alamance	85,674	197.4	71,220	20.3
Orange	42,970	107.9	34,435	24.8
Durham	111,995	374.5	101,639	10.2
Wake	169,082	195.2	136,450	23.9
Johnston	62,936	79.1	65,906	-4.5
Wayne	82,059	147.8	64,267	27.7
Totals -	801,236 802,236		664,974	
Average (Seven Counties)		200.4 200.6		
Seven Counties		-		20.5 20.6
State of North Carolina	4,556,155	92.7	4,061,929	12.2
United States	179,323,175	50.5	151,325,798	18.5

Source:

U. S. Bureau of the Census, Department of Commerce,
Washington, D. C.

[fol. 84]

EXHIBIT 4 TO PETITION

84

**ESTIMATED RATIO OF PERSONS PER REGISTERED
PASSENGER AUTOMOBILE IN THE SEVERAL NORTH
CAROLINA COUNTIES TRAVERSED BY TRAINS NOS.
13 AND 16 COMPARED WITH THE STATE OF NORTH
CAROLINA**

<u>County</u>	<u>Population (1960)</u>	<u>Estimated Registered Passenger Automobiles (1960)</u>	<u>Ratio of Persons Per Registered Pass. Automobile</u>
Guilford	246,520	94,088	2.6
Alamance	85,674	32,334	2.6
Orange	42,970	11,083	3.9
Durham	111,995	37,122	3.0
Wake	169,082	63,177	2.9
Johnston	63,936	17,035	3.8
Wayne	82,059	21,685	3.8
Totals	801,236 802,236	276,524	
Average (Seven Counties)		-	2.9
State of North Carolina	4,556,155	1,380,461	3.3

Source:

Department of Motor Vehicles, State of
North Carolina and U. S. Bureau of the Census,
Department of Commerce.

[fol. 85]

EXHIBIT 5 TO PETITION

85

**ESTIMATED RATIO OF PERSONS PER REGISTERED
PASSENGER AUTOMOBILE IN THE PRINCIPAL CITIES
AND TOWNS OF THE SEVERAL COUNTIES TRAVERSED
BY TRAINS NOS. 13 AND 16**

<u>City or Town</u>	<u>Population (1960)</u>	<u>Estimated Registered Passenger Automobiles (1960)</u>	<u>Estimated Ratio of Persons Per Registered Pass. Automobile</u>
Greensboro	119,574	52,390	2.2
Burlington	33,199	19,355	1.7
Chapel Hill*	12,573	6,937	1.8
Durham	78,302	35,962	2.1
Raleigh	93,931	43,394	2.1
Selma	3,102	2,498	1.2
Goldsboro	<u>28,873</u>	<u>14,766</u>	1.9
Totals -	369,554	175,302	
Average (Seven Cities or Towns)		-	2.1

*Chapel Hill is located off the route of Trains Nos. 13 and 16 southwest of Durham.

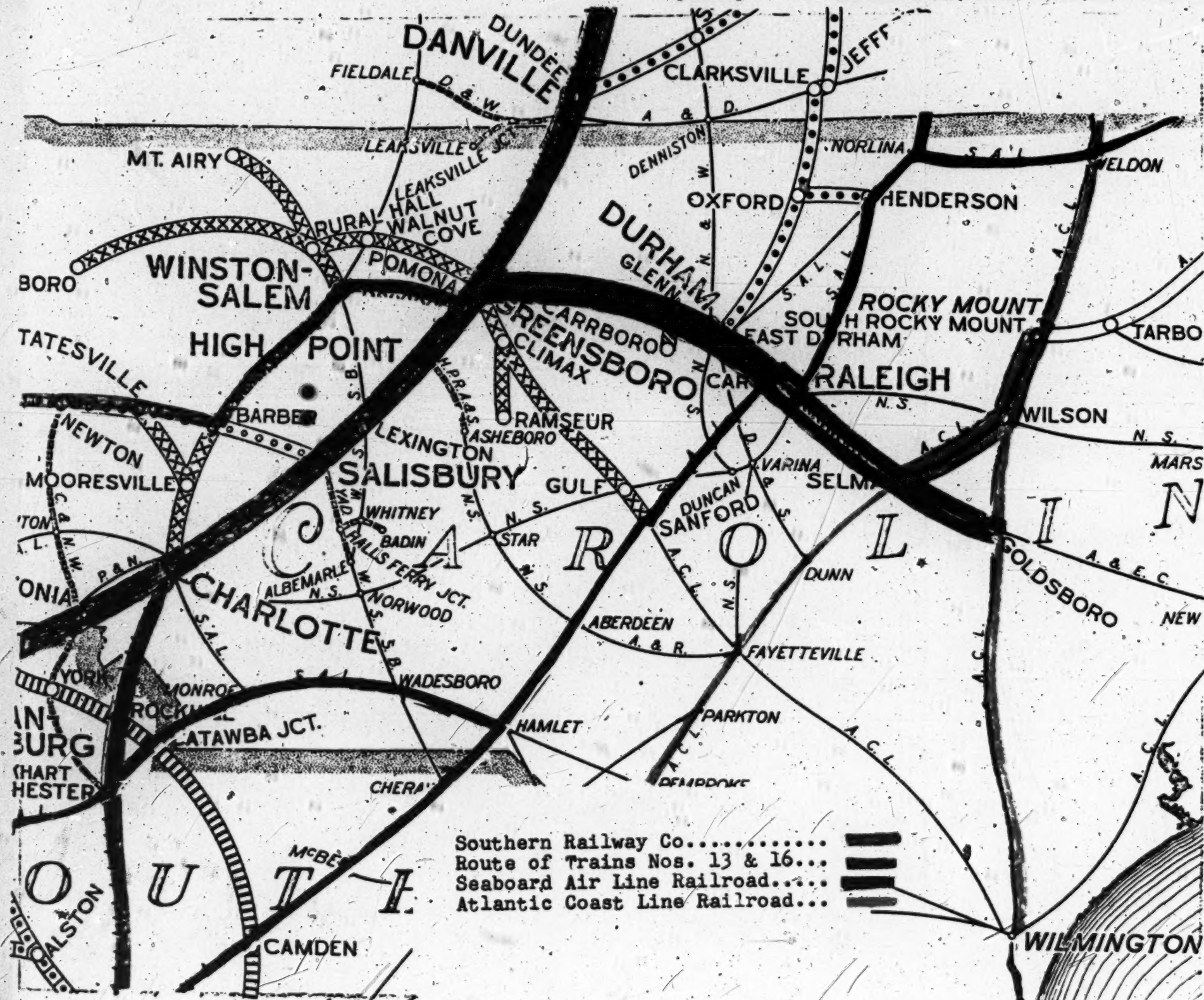
Source:

Department of Motor Vehicles, State of North Carolina
and U. S. Bureau of the Census, Department of Commerce.

[fol. 86]

EXHIBIT 6 TO PETITION

86



**TIMETABLE OF OTHER SOUTHERN RAILWAY CO.
PASSENGER TRAINS SERVING GREENSBORO, N.C.**

WASHINGTON-CHARLOTTE-ATLANTA

[illegible]

ATLANTA-CHARLOTTE-WASHINGTONAtlanta - Charlotte
(see Table 4, Page 14)[illegible]

Source: Southern Railway System Passenger
Train Schedules, Folder, dated Oct. 30, 1960

SOUTHERN RAILWAY COMPANY

GREENSBORO, WINSTON-SALEM AND ASHEVILLE									
(Winston-Salem and Asheville Divisions)									
Read Down					Eastern Time				
25	27	29	31	Mile	25	27	29	31	Mile
1	2	3	4		New York (P. M.)	10:00	10:15	10:30	10:45
2	3	4	5		Philadelphia (P. M.)	10:15	10:30	10:45	11:00
3	4	5	6		Baltimore (P. M.)	10:30	10:45	11:00	11:15
4	5	6	7		Washington (P. M.)	10:45	11:00	11:15	11:30
5	6	7	8		Washington (SOU)	11:00	11:15	11:30	11:45
6	7	8	9		Greensboro	11:15	11:30	11:45	12:00
7	8	9	10		Greensboro	11:30	11:45	12:00	12:15
8	9	10	11		Greensboro	11:45	12:00	12:15	12:30
9	10	11	12		Greensboro	12:00	12:15	12:30	12:45
10	11	12	13		Greensboro	12:15	12:30	12:45	13:00
11	12	13	14		Greensboro	12:30	12:45	13:00	13:15
12	13	14	15		Greensboro	12:45	13:00	13:15	13:30
13	14	15	16		Greensboro	13:00	13:15	13:30	13:45
14	15	16	17		Greensboro	13:15	13:30	13:45	14:00
15	16	17	18		Greensboro	13:30	13:45	14:00	14:15
16	17	18	19		Greensboro	13:45	14:00	14:15	14:30
17	18	19	20		Greensboro	14:00	14:15	14:30	14:45
18	19	20	21		Greensboro	14:15	14:30	14:45	15:00
19	20	21	22		Greensboro	14:30	14:45	15:00	15:15
20	21	22	23		Greensboro	14:45	15:00	15:15	15:30
21	22	23	24		Greensboro	15:00	15:15	15:30	15:45
22	23	24	25		Greensboro	15:15	15:30	15:45	16:00
23	24	25	26		Greensboro	15:30	15:45	16:00	16:15
24	25	26	27		Greensboro	15:45	16:00	16:15	16:30
25	26	27	28		Greensboro	16:00	16:15	16:30	16:45
26	27	28	29		Greensboro	16:15	16:30	16:45	17:00
27	28	29	30		Greensboro	16:30	16:45	17:00	17:15
28	29	30	31		Greensboro	16:45	17:00	17:15	17:30
29	30	31	32		Greensboro	17:00	17:15	17:30	17:45
30	31	32	33		Greensboro	17:15	17:30	17:45	18:00
31	32	33	34		Greensboro	17:30	17:45	18:00	18:15
32	33	34	35		Greensboro	17:45	18:00	18:15	18:30
33	34	35	36		Greensboro	18:00	18:15	18:30	18:45
34	35	36	37		Greensboro	18:15	18:30	18:45	19:00
35	36	37	38		Greensboro	18:30	18:45	19:00	19:15
36	37	38	39		Greensboro	18:45	19:00	19:15	19:30
37	38	39	40		Greensboro	19:00	19:15	19:30	19:45
38	39	40	41		Greensboro	19:15	19:30	19:45	20:00
39	40	41	42		Greensboro	19:30	19:45	20:00	20:15
40	41	42	43		Greensboro	19:45	20:00	20:15	20:30
41	42	43	44		Greensboro	20:00	20:15	20:30	20:45
42	43	44	45		Greensboro	20:15	20:30	20:45	21:00
43	44	45	46		Greensboro	20:30	20:45	21:00	21:15
44	45	46	47		Greensboro	20:45	21:00	21:15	21:30
45	46	47	48		Greensboro	21:00	21:15	21:30	21:45
46	47	48	49		Greensboro	21:15	21:30	21:45	22:00
47	48	49	50		Greensboro	21:30	21:45	22:00	22:15
48	49	50	51		Greensboro	21:45	22:00	22:15	22:30
49	50	51	52		Greensboro	22:00	22:15	22:30	22:45
50	51	52	53		Greensboro	22:15	22:30	22:45	23:00
51	52	53	54		Greensboro	22:30	22:45	23:00	23:15
52	53	54	55		Greensboro	22:45	23:00	23:15	23:30
53	54	55	56		Greensboro	23:00	23:15	23:30	23:45
54	55	56	57		Greensboro	23:15	23:30	23:45	24:00
55	56	57	58		Greensboro	23:30	23:45	24:00	24:15
56	57	58	59		Greensboro	23:45	24:00	24:15	24:30
57	58	59	60		Greensboro	24:00	24:15	24:30	24:45
58	59	60	61		Greensboro	24:15	24:30	24:45	25:00
59	60	61	62		Greensboro	24:30	24:45	25:00	25:15
60	61	62	63		Greensboro	24:45	25:00	25:15	25:30
61	62	63	64		Greensboro	25:00	25:15	25:30	25:45
62	63	64	65		Greensboro	25:15	25:30	25:45	26:00
63	64	65	66		Greensboro	25:30	25:45	26:00	26:15
64	65	66	67		Greensboro	25:45	26:00	26:15	26:30
65	66	67	68		Greensboro	26:00	26:15	26:30	26:45
66	67	68	69		Greensboro	26:15	26:30	26:45	27:00
67	68	69	70		Greensboro	26:30	26:45	27:00	27:15
68	69	70	71		Greensboro	26:45	27:00	27:15	27:30
69	70	71	72		Greensboro	27:00	27:15	27:30	27:45
70	71	72	73		Greensboro	27:15	27:30	27:45	28:00
71	72	73	74		Greensboro	27:30	27:45	28:00	28:15
72	73	74	75		Greensboro	27:45	28:00	28:15	28:30
73	74	75	76		Greensboro	28:00	28:15	28:30	28:45
74	75	76	77		Greensboro	28:15	28:30	28:45	29:00
75	76	77	78		Greensboro	28:30	28:45	29:00	29:15
76	77	78	79		Greensboro	28:45	29:00	29:15	29:30
77	78	79	80		Greensboro	29:00	29:15	29:30	29:45
78	79	80	81		Greensboro	29:15	29:30	29:45	30:00
79	80	81	82		Greensboro	29:30	29:45	30:00	30:15
80	81	82	83		Greensboro	29:45	30:00	30:15	30:30
81	82	83	84		Greensboro	30:00	30:15	30:30	30:45
82	83	84	85		Greensboro	30:15	30:30	30:45	31:00
83	84	85	86		Greensboro	30:30	30:45	31:00	31:15
84	85	86	87		Greensboro	30:45	31:00	31:15	31:30
85	86	87	88		Greensboro	31:00	31:15	31:30	31:45
86	87	88	89		Greensboro	31:15	31:30	31:45	32:00
87	88	89	90		Greensboro	31:30	31:45	32:00	32:15
88	89	90	91		Greensboro	31:45	32:00	32:15	32:30
89	90	91	92		Greensboro	32:00	32:15	32:30	32:45
90	91	92	93		Greensboro	32:15	32:30	32:45	33:00
91	92	93	94		Greensboro	32:30	32:45	33:00	33:15
92	93	94	95		Greensboro	32:45	33:00	33:15	33:30
93	94	95	96		Greensboro	33:00	33:15	33:30	33:45
94	95	96	97		Greensboro	33:15	33:30	33:45	34:00
95	96	97	98		Greensboro	33:30	33:45	34:00	34:15
96	97	98	99		Greensboro	33:45	34:00	34:15	34:30
97	98	99	100		Greensboro	34:00	34:15	34:30	34:45
98	99	100	101		Greensboro	34:15	34:30	34:45	35:00
99	100	101	102		Greensboro	34:30	34:45	35:00	35:15
100	101	102	103		Greensboro	34:45	35:00	35:15	35:30
101	102	103	104		Greensboro	35:00	35:15	35:30	35:45
102	103	104	105		Greensboro	35:15	35:30	35:45	36:00
103	104	105	106		Greensboro	35:30	35:45	36:00	36:15
104	105	106	107		Greensboro	35:45	36:00	36:15	36:30
105	106	107	108		Greensboro	36:00	36:15	36:30	36:45
106	107	108	109		Greensboro	36:15	36:30	36:45	37:00
107	108	109	110		Greensboro	36:30	36:45	37:00	37:15
108	109	110	111		Greensboro	36:45	37:00	37:15	37:30
109	110	111	112		Greensboro	37:00	37:15	37:30	37:45
110	111	112	113		Greensboro	37:15	37:30	37:45	38:00
111	112	113	114		Greensboro	37:30	37:45	38:00	38:15
112	113	114	115		Greensboro	37:45	38:00	38:15	38:30
113	114	115	116		Greensboro	38:00	38:15	38:30	38:45
114	115	116	117		Greensboro	38:15	38:30	38:45	39:00
115	116	117	118		Greensboro	38:30	38:45	39:00	39:15
116	117	118	119		Greensboro	38:45	39:00	39:15	39:30
117	118	119	120		Greensboro	39:00	39:15	39:30	39:45
118	119	120	121		Greensboro	39:15	39:30	39:45	40:00
119	120	121	122		Greensboro	39:30	39:45	40:00	40:15
120	121	122	123		Greensboro	39:45	40:00	40:15	40:30
121	122	123	124		Greensboro	40:00	40:15	40:30	40:45
122	123	124	125		Greensboro	40:15	40:30	40:45	41:00
123	124	125	126		Greensboro	40:30	40:45	41:00	41:15
124	125	126	127		Greensboro	40:45	41:00	41:15	41:30
125	126	127	128		Greensboro	41:00	41:15	41:30	41:45
126	127	128	129		Greensboro	41:15	41:30	41:45	42:00
127	128	129	130		Greensboro	41:30	41:45	42:00	42:15
128	129	130	131		Greensboro	41:45	42:00	42:15	42:30
129	130	131	132		Greensboro	42:00	42:15	42:30	42:45
130	131	132	133		Greensboro	42:15	42:30	42:45	43:00
131	132	133	134		Greensboro	42:30	42:45	43:00	43:15
132	133	134	135		Greensboro	42:45	43:00	43:15	43:30
133	134	135	136		Greensboro	43:00	43:15	43:30	43:45
134	135	136	137		Greensboro	43:15	43:30	43:45	44:00
135	136	137	138		Greensboro	43:30	43:45	44:00	44:15
136	137	138	139		Greensboro	43:45	44:00	44:15	44:30
137	138	139	140		Greensboro	44:00	44:15	44:30	44:45

TIME TABLE OF SEABOARD AIR LINE RAILROAD PASSENGER TRAINS SERVING RALEIGH, N. C.

SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA.

Daily Trains—Read Down						TABLE 1		Daily Trains—Read Up					
171	171	171	171	171	171	Miles	NYNHAN PRR RF&P SAL	171	171	171	171	171	171
11:30	11:30	11:30	11:30	11:30	11:30		Eastern Standard Time	11:30	11:30	11:30	11:30	11:30	11:30
							lv BOSTON (NYNHAN)						
							Providence						
							New Haven						
							NEW YORK (Gr. Cent. Sta.)						
							NEW YORK (Penn Station)						
							WASHINGTON						
							NEW YORK (PRR)						
							Newark						
							Trouton						
							North Philadelphia						
							PHILADELPHIA (30th St. Sta.)						
							Washington						
							Baltimore						
							WASHINGTON						
							WASHINGTON (RF&P)						
							Alexandria						
							Quantico						
							Fredericksburg						
							RICHMOND (Broad St. Sta.) (RF&P)						
							RICHMOND (Broad St. Sta.) (SAL)						
							JAMES RIVER						
							Chester						
							APPROXIMATE RIVER						
							Petersburg						
							Dinwiddie						
							DeWitt						
							McKenny						
							NOTTAWAY RIVER						
							Rawlings						
							Warfield						
							Albion						
							Cochran						
							MEHERRIN RIVER						
							LaCrosse						
							Hagood						
							Bracey						
							ROANOKE RIVER						
							Passhall						
							Wise						
							Norlina						
							Ridgeway						
							Manson						
							Middleburg						
							Greystone						
							Henderson						
							Kittrell						
							TAR RIVER						
							Franklin						
							Youngsville						
							Wake Forest						
							NEUSE RIVER						
							Neuse						
							RALEIGH						
							NORFOLK (Tunnel Bus) Note [5]						
							ELIZABETH RIVER						
							PORTSMOUTH (SAL)						
							Suffolk						
							Franklin						
							Boykins						
							ROANOKE RIVER						
							Weldon						
							Norlina						
							Henderson						
							Wake Forest						
							RALEIGH						
							RALEIGH						
							Cary						
							Apex						
							New Hill						
							Merry Oaks						
							HAW RIVER						
							Mansure						
							DEEP RIVER						
							Sanford						
							Cameron						
							Vass						
							Southern Pines (Pinehurst)						
							Aberdeen						
							Hoffman						
							Hamlet						

Characters explained on page 14.
Equipment on pages 5-6, 30

Light Face Figures A.M.

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(Continued on Pages 13-14)

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Dark Face Figures P. M.

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EXHIBIT 10 TO PETITION

SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA

(Continued)

Read Down				Miles from Richmond	TABLE 2		Read Up					CHARACTERS—TABLES 1 and 2
9	17	7	21		Daily Trains—Eastern Standard Time		10	10	16	22	8	
AM 9 15	AM 2 10	PM 12 45	PM 9 30	258.5	to Hamlet	N. C.	PM 6 55	PM 10 00	AM 12 45	AM 5 10	AM 5 00	a Stops to receive and discharge passengers for and from Richmond, Savannah and beyond.
1 9 33				265.4	to Oxbow							b Stops to receive and discharge passengers for and from Washington and beyond.
9 46		1 1 05		274.3	to Wallace	S. C.	1 6 22					c Stops to discharge passengers from Petersburg, Richmond and beyond, and to receive for Raleigh and beyond.
10 03				275.5	to Chesapeake River							d Stops only to receive or discharge passengers for or from points south of Richmond.
10 19				276.7	to Charaw		6 12				4 20	e Stops on signal to receive or discharge revenue passengers for or from points south of Richmond.
10 31				281.6	to Kimberly							f Stops to discharge passengers on notice to Conductor, to receive passengers on signal or on notice to ticket agent.
10 39				289.9	to Patrick							g Stops to receive and discharge passengers for and from Columbia and beyond.
10 48				305.1	to McBoe						3 45	h Stops on signal to receive or discharge revenue passengers.
10 55				311.9	to Bethune						3 35	i Stops to discharge passengers from Washington and beyond and to receive for west of Atlanta.
		1 55		318.0	to Caswell							j Stops to discharge passengers from Raleigh and beyond and receive for Columbia, Monroe and beyond.
				324.7	to Shepard							k Stops to discharge passengers from Raleigh and beyond, and receive for Norfolk and beyond.
				331.5	to Camden							l Stops to discharge passengers from Atlanta and beyond and to receive for points on the Portsmouth line.
				333.5	to Waynes River							m Stops to receive and discharge passengers for and from Monroe and beyond.
				335.5	to Lugoff							n Stops to receive and discharge passengers for and from Petersburg and beyond; also points beyond Wildwood.
				344.1	to Blaney							o Stops to receive and discharge passengers for and from Jacksonville, Tallahassee and beyond.
				349.1	to Pontiac							p Stops to receive and discharge passengers for and from Petersburg and beyond; also points beyond Wildwood.
				364.4	to COLUMBIA	LA						q Stops to receive and discharge passengers for and from Petersburg and beyond; also points beyond Wildwood.
				364.4	to COLUMBIA	LA						r Stops to receive and discharge passengers for and from Jacksonville, Tallahassee and beyond.
				365.9	to Cape Fear River							s Stops to discharge passengers from north of Hamlet, and receive for Columbia and beyond.
				366.4	to Cayce							t Stops to receive and discharge passengers for and from Raleigh, Jacksonville and beyond.
				371.4	to Dixiana							u Stops to discharge passengers from Savannah and beyond, to receive for Ocala, Tallahassee and beyond.
				379.7	to Gaston							v Stops to discharge passengers from Petersburg and beyond, to receive for Wildwood and beyond.
				385.5	to Swann							w Stops to receive revenue passengers.
				390.8	to Woodford							x Stops for transfer of passengers to South-bound "Silver Meteor."
				394.4	to North							y Stops to receive and discharge passengers for or from Hamlet, Raleigh and beyond.
				395.1	to North Edisto River							z Stops to discharge passengers from Monroe and beyond.
				399.0	to Livingston							aa Portsmouth-Atlanta coach 28-B, sleeper B-3, handled on Train 17 Portsmouth to Raleigh, then on Train 33 to Atlanta.
				400.5	to Neuse							ab Atlanta-Portsmouth coach 28-B and sleeper B-4, handled on Train 34 from Atlanta to Raleigh, then on Train 18 to Portsmouth.
				406.4	to Norway							ac Stops to discharge passengers from points on the Portsmouth-Norfolk line, and receive for Savannah and beyond, also for Athens and Atlanta.
				410.4	to South Edisto River							ad Does not run on Sundays.
				415.0	to Denmark							ae Does not run on Saturday nights.
				422.3	to Ovan							af Does not run on Sundays and Holidays.
				425.4	to Olan							ag See page 30 for explanation.
				428.9	to Schofield							
				431.4	to Uimora							
				435.5	to Sycamore							
				441.1	to Fairfax							
				447.7	to Gifford							
				451.1	to Luray							
				455.2	to Estlin							
				460.3	to Scott							
				465.4	to Garnett	S. C.						
				470.2	to Savannah River							
				473.8	to City	GA						
				481.4	to Stillwell							
				487.2	to Rincon							
				505.3	to West Savannah							
				505.3	to SAVANNAH	LA						
				520.3	to SAVANNAH	LA						
				521.7	to Ogeechee River							
				533.4	to Richmond Hill							
				538.0	to Darchoeter							
				545.3	to Nichols							
				548.4	to Jones							
				552.3	to Warsaw							
				558.7	to Townsend							
				561.8	to Cox							
				565.0	to Aulana River							
				572.6	to Everett (Brunswick Jct.)							
				587.0	to Thalmann							
				590.8	to Waverly							
				594.8	to White Oak							
				595.3	to Woodbine							
				607.1	to Kingsland	GA						
				611.0	to St. Mary's River							
				613.6	to Gross	FLA.						
					to Gross (Via Cut-off)							
					to Callahan							
					to Baldwin							
				613.6	to Gross							
				620.2	to Yulee (Fernandina Beach)							
				644.3	to JACKSONVILLE	LA						
					to JACKSONVILLE							
					to Baldwin							
					to Lake City							
					to Live Oak							
					to Madison							
					to TALLAHASSEE							
					to Quincy							
					to CHATTAHOOCHEE							
					to PENSACOLA (C.T.) (L.A.N.)							
					to Flomoin							
					to Mobile							
					to NEW ORLEANS							

Characters explained on page 14.
Equipment on pages 3-4.

Light Face Figures A-M

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(Continued on Pages 15-16)

14

Dark Face Figures P-M.

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(Continued)




WANT to cut your transportation costs?

WANT a more dependable, more flexible way to move your traffic?

Whether you own trailers or not — Seaboard's Piggy-Back Service can be the answer for you. To help you the Seaboard has an experienced staff — that is waiting to assist with your rate, schedule, or equipment problem.

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SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA

(Continued)

Read Down				Miles from Richmond	TABLE 4		Read Up			
9-1	87-187	7	21-121		Daily Trains	Eastern Standard Time	2 10	150 58	122-22	8
THE PALM LANE SAL tickets honored between St. Petersburg and Tampa via Southern Railway Lines.	AM 9 15	AM 9 30	AM 10 09	644 3	to JACKSONVILLE	FLA.	AM 6 30	PM 4 05	PM 10 35	PM 11 00
	10 17	10 30	10 43	642 6	to Baldwin		5 10			
	10 23	10 36	10 49	681 6	to Loxley		4 55	3 00	10 35	
	10 29	10 42	10 55	680 5	to Starke					
	10 35	10 48	11 01	694 7	to Hanger					
	10 41	10 54	11 07	700 1	to Waver (Gainesville)					
	10 47	11 00	11 13	705 4	to Orange Heights					
	10 53	11 06	11 19	719 4	to Hawthorne					
	11 00	11 13	11 26	727 0	to Citra					
	11 06	11 19	11 32	732 5	to Sparr					
	11 12	11 25	11 38	735 8	to Anthony					
	11 18	11 31	11 44	743 4	to Ocala (Silver Springs)		4 05	2 10	10 35	
	11 24	11 37	11 50	753 2	to Santos					
	11 30	11 43	11 56	757 1	to Belleview					
	11 36	11 49	12 02	761 1	to Summerfield					
	11 42	11 55	12 08	766 9	to Oxford					
	11 48	12 01	12 14	771 5	to Wildwood	Homestead				
	11 54	12 07	12 20	771 5	to Wildwood					
	12 00	12 13	12 26	776 1	to Colman					
	12 06	12 19	12 32	786 1	to Bushnell					
	12 12	12 25	12 38	800 4	to Loxley					
	12 18	12 31	12 44	808 1	to Dade City					
	12 24	12 37	12 50	817 6	to Zephyrhills					
	12 30	12 43	12 56	829 0	to Knights					
	12 36	12 49	13 02	833 0	to Plant City					
	12 42	12 55	13 08	837 9	to Turkey Creek					
	12 48	13 01	13 14	839 5	to Sydney					
	12 54	13 07	13 20	842 5	to Valrico					
	13 00	13 13	13 26	844 8	to Brandon					
	13 06	13 19	13 32	845 8	to Limon					
	13 12	13 25	13 38	853 0	to TAMPA					
	13 18	13 31	13 44	855 0	to TAMPA					
HILLSBORO RIVER										
SAL tickets honored between St. Petersburg and Tampa via Southern Railway Lines.	8 51	8 51	8 51	861 5	to Sulphur Springs					
	8 57	8 57	8 57	875 2	to Odessa					
	9 03	9 03	9 03	880	to Safety Harbor					
	9 09	9 09	9 09	887 7	to Clearwater (Bellevue-Bilmar Hotel)					
	9 15	9 15	9 15	891 0	to Belleair					
	9 21	9 21	9 21	891 0	to Largo					
	9 27	9 27	9 27	891 0	to Bay Pines (Madison Bk. - Arlington Bk.)					
	9 33	9 33	9 33	891 0	to ST. PETERSBURG					
	9 39	9 39	9 39	891 0						
	9 45	9 45	9 45	891 0						

CHARACTERS—TABLES 3-4-5-8

- Stops to receive and discharge passengers from Petersburg and beyond, for and from points at which these trains are regularly scheduled to stop, for and from Winter Haven and Hollywood.
- Stops to receive and discharge passengers for and from Jacksonville and beyond.
- Stops to receive and discharge passengers for and from Jacksonville and beyond, also for and from Waldo and Ocala.
- Stops to receive and discharge passengers for and from Jacksonville and beyond, and points between St. Petersburg and West Lake Wales.
- Stops to receive and discharge passengers for and from West Palm Beach and Miami, also points covered by "d", next above.
- Stops to discharge passengers on notice to Conductor; to receive passengers on signal or on notice to ticket agent.
- Stops to receive and discharge passengers for and from Waldo and Ocala, also points covered by "d", above.
- Stops to receive and discharge passengers for and from Petersburg and beyond.
- Stops to discharge passengers from West Savannah and beyond, and to receive passengers for Savannah and beyond.
- Stops to receive and discharge passengers for and from Petersburg and beyond, points served by the "Gulf Wind" and points between St. Petersburg and West Lake Wales.
- Stops to receive passengers for Jacksonville and beyond, for points between West Lake Wales and St. Petersburg, also for Winter Haven, Ocala and Waldo.
- Stops to receive passengers for and from Jacksonville and beyond.
- Stops to receive and discharge passengers for and from points north of Plant City.
- Stops to receive passengers for points south of Wildwood where train stops.
- Stops to discharge passengers from north of Jacksonville, and arriving on connecting lines.
- Stops to receive passengers for Tampa and beyond.
- Stops to discharge passengers from Wildwood and beyond.
- Stops to discharge passengers from Tampa and points south, and from points on the Wildwood line.
- Stops to receive passengers from Columbia and beyond.
- Stops to discharge passengers from Columbia and beyond, and to receive for West Palm Beach and Miami.
- Stops to discharge passengers from Jacksonville and beyond and from points between Tampa and Wildwood.
- Stops to receive and discharge passengers for and from West Palm Beach and Miami, also points covered by "m" above.
- Time is for Seaboard Station, Tampa.

**SCHEDULES BETWEEN EASTERN CITIES AND ATLANTA, BIRMINGHAM AND THE SOUTHWEST
THROUGH VIRGINIA AND THE CAROLINAS**

Daily Trains - Read Down				TABLE 11		Daily Trains - Read Up			
Miles				NORFOLK FRED RICH SAL		Miles			
Eastern Standard Time				NORFOLK (Tomball Bldg.) Note (B) Page 30 as		Miles			
2 30	11 00	7 00	10 20	to BOSTON (Norfolk)	to	5 35	8 15	8 45	12 10
7 40	12 10	7 10	3 33	to NEW YORK (Penn. Station)	to	11 30	10 55	10 25	10 55
11 20	12 30	7 20	3 48	to Newark	to	11 35	10 30	10 00	10 30
11 30	12 40	7 30	3 51	to Trenton	to	11 40	10 35	10 05	10 35
11 40	12 50	7 40	3 55	to North Philadelphia	to	11 45	10 40	10 10	10 40
11 50	1 00	7 50	3 58	to PHILADELPHIA (30th St. Station)	to	11 50	10 45	10 15	10 45
12 00	1 10	8 00	4 01	to Wilmington	to	11 55	10 50	10 20	10 50
12 10	1 20	8 10	4 04	to Baltimore	to	12 00	10 55	10 25	10 55
12 20	1 30	8 20	4 07	to WASHINGTON	to	12 05	11 00	10 30	11 00
12 30	1 40	8 30	4 10	to WASHINGTON (RFAP)	to	12 10	11 05	10 35	11 05
12 40	1 50	8 40	4 13	to Alexandria	VA	12 15	11 10	10 40	11 10
12 50	2 00	8 50	4 16	to Quantico	VA	12 20	11 15	10 45	11 15
1 00	2 10	9 00	4 19	to Fredericksburg	to	12 25	11 20	10 50	11 20
1 10	2 20	9 10	4 22	to RICHMOND (Broad St. Sta.) (RFAP)	to	12 30	11 25	10 55	11 25
1 20	2 30	9 20	4 25	to RICHMOND (Broad St. Sta.) (N.E.)	to	12 35	11 30	11 00	11 30
1 30	2 40	9 30	4 28	to Petersburg	VA	12 40	11 35	11 05	11 35
1 40	2 50	9 40	4 31	to Roanoke River	VA	12 45	11 40	11 10	11 40
1 50	3 00	9 50	4 34	to Norfolk	VA	12 50	11 45	11 15	11 45
2 00	3 10	10 00	4 37	to Henderson	VA	12 55	11 50	11 20	11 50
2 10	3 20	10 10	4 40	to RALEIGH	NC	1 00	11 55	11 25	12 00
2 20	3 30	10 20	4 43	to Norfolk (Tomball Bldg.) Note (B) Page 30 as	to	1 05	12 00	11 30	12 05
2 30	3 40	10 30	4 46	to Elizabeth River	to	1 10	12 05	11 35	12 10
2 40	3 50	10 40	4 49	to Portsmouth	to	1 15	12 10	11 40	12 15
2 50	4 00	10 50	4 52	to Sowers	to	1 20	12 15	11 45	12 20
3 00	4 10	11 00	4 55	to Suffolk	to	1 25	12 20	11 50	12 25
3 10	4 20	11 10	4 58	to Parva	to	1 30	12 25	11 55	12 30
3 20	4 30	11 20	5 01	to Carverville	to	1 35	12 30	12 00	12 35
3 30	4 40	11 30	5 04	to Blackwater River	to	1 40	12 35	12 05	12 40
3 40	4 50	11 40	5 07	to Franklin	to	1 45	12 40	12 10	12 45
3 50	5 00	11 50	5 10	to Nottoway River	to	1 50	12 45	12 15	12 50
4 00	5 10	12 00	5 13	to Head	to	1 55	12 50	12 20	12 55
4 10	5 20	12 10	5 16	to Roanoke	VA	2 00	12 55	12 25	13 00
4 20	5 30	12 20	5 19	to Sayles	VA	2 05	13 00	12 30	13 05
4 30	5 40	12 30	5 22	to Meherrin River	N.C.	2 10	13 05	12 35	13 10
4 40	5 50	12 40	5 25	to Margaret	N.C.	2 15	13 10	12 40	13 15
4 50	6 00	12 50	5 28	to Southard	N.C.	2 20	13 15	12 45	13 20
5 00	6 10	1 00	5 31	to Gumbert	N.C.	2 25	13 20	12 50	13 25
5 10	6 20	1 10	5 34	to Carysburg	N.C.	2 30	13 25	12 55	13 30
5 20	6 30	1 20	5 37	to Roanoke River	N.C.	2 35	13 30	13 00	13 35
5 30	6 40	1 30	5 40	to Weldon	N.C.	2 40	13 35	13 05	13 40
5 40	6 50	1 40	5 43	to Roanoke Rapids	N.C.	2 45	13 40	13 10	13 45
5 50	7 00	1 50	5 46	to Summit	N.C.	2 50	13 45	13 15	13 50
6 00	7 10	2 00	5 49	to Littleton	N.C.	2 55	13 50	13 20	13 55
6 10	7 20	2 10	5 52	to Vaughan	N.C.	3 00	13 55	13 25	14 00
6 20	7 30	2 20	5 55	to Mason	N.C.	3 05	14 00	13 30	14 05
6 30	7 40	2 30	5 58	to Warren Plains	N.C.	3 10	14 05	13 35	14 10
6 40	7 50	2 40	6 01	to Norfolk	N.C.	3 15	14 10	13 40	14 15
6 50	8 00	2 50	6 04	to Henderson	N.C.	3 20	14 15	13 45	14 20
7 00	8 10	3 00	6 07	to RALEIGH	NC	3 25	14 20	13 50	14 25
7 10	8 20	3 10	6 10	to RALEIGH	NC	3 30	14 25	13 55	14 30
7 20	8 30	3 20	6 13	to Sanford	NC	3 35	14 30	14 00	14 35
7 30	8 40	3 30	6 16	to Southern Pine (Pinehurst)	NC	3 40	14 35	14 05	14 40
7 40	8 50	3 40	6 19	to Aberdeen	NC	3 45	14 40	14 10	14 45
7 50	9 00	3 50	6 22	to Hamlet	NC	3 50	14 45	14 15	14 50
8 00	9 10	4 00	6 25	to Hamlet	NC	3 55	14 50	14 20	14 55
8 10	9 20	4 10	6 28	to Hamlet	NC	4 00	14 55	14 25	15 00
8 20	9 30	4 20	6 31	to Hamlet	NC	4 05	15 00	14 30	15 05
8 30	9 40	4 30	6 34	to Hamlet	NC	4 10	15 05	14 35	15 10
8 40	9 50	4 40	6 37	to Hamlet	NC	4 15	15 10	14 40	15 15
8 50	10 00	4 50	6 40	to Hamlet	NC	4 20	15 15	14 45	15 20
9 00	10 10	5 00	6 43	to Hamlet	NC	4 25	15 20	14 50	15 25
9 10	10 20	5 10	6 46	to Hamlet	NC	4 30	15 25	14 55	15 30
9 20	10 30	5 20	6 49	to Hamlet	NC	4 35	15 30	15 00	15 35
9 30	10 40	5 30	6 52	to Hamlet	NC	4 40	15 35	15 05	15 40
9 40	10 50	5 40	6 55	to Hamlet	NC	4 45	15 40	15 10	15 45
9 50	11 00	5 50	6 58	to Hamlet	NC	4 50	15 45	15 15	15 50
10 00	11 10	6 00	7 01	to Hamlet	NC	4 55	15 50	15 20	15 55
10 10	11 20	6 10	7 04	to Hamlet	NC	5 00	15 55	15 25	16 00
10 20	11 30	6 20	7 07	to Hamlet	NC	5 05	16 00	15 30	16 05
10 30	11 40	6 30	7 10	to Hamlet	NC	5 10	16 05	15 35	16 10
10 40	11 50	6 40	7 13	to Hamlet	NC	5 15	16 10	15 40	16 15
10 50	12 00	6 50	7 16	to Hamlet	NC	5 20	16 15	15 45	16 20
11 00	12 10	7 00	7 19	to Hamlet	NC	5 25	16 20	15 50	16 25
11 10	12 20	7 10	7 22	to Hamlet	NC	5 30	16 25	15 55	16 30
11 20	12 30	7 20	7 25	to Hamlet	NC	5 35	16 30	16 00	16 35
11 30	12 40	7 30	7 28	to Hamlet	NC	5 40	16 35	16 05	16 40
11 40	12 50	7 40	7 31	to Hamlet	NC	5 45	16 40	16 10	16 45
11 50	1 00	7 50	7 34	to Hamlet	NC	5 50	16 45	16 15	16 50
12 00	1 10	8 00	7 37	to Hamlet	NC	5 55	16 50	16 20	16 55
12 10	1 20	8 10	7 40	to Hamlet	NC	6 00	16 55	16 25	17 00
12 20	1 30	8 20	7 43	to Hamlet	NC	6 05	17 00	16 30	17 05
12 30	1 40	8 30	7 46	to Hamlet	NC	6 10	17 05	16 35	17 10
12 40	1 50	8 40	7 49	to Hamlet	NC	6 15	17 10	16 40	17 15
12 50	2 00	8 50	7 52	to Hamlet	NC	6 20	17 15	16 45	17 20
1 00	2 10	9 00	7 55	to Hamlet	NC	6 25	17 20	16 50	17 25
1 10	2 20	9 10	7 58	to Hamlet	NC	6 30	17 25	16 55	17 30
1 20	2 30	9 20	8 01	to Hamlet	NC	6 35	17 30	17 00	17 35
1 30	2 40	9 30	8 04	to Hamlet	NC	6 40	17 35	17 05	17 40
1 40	2 50	9 40	8 07	to Hamlet	NC	6 45	17 40	17 10	17 45
1 50	3 00	9 50	8 10	to Hamlet	NC	6 50	17 45	17 15	17 50
2 00	3 10	10 00	8 13	to Hamlet	NC	6 55	17 50	17 20	17 55
2 10	3 20	10 10	8 16	to Hamlet	NC	7 00	17 55	17 25	18 00
2 20	3 30	10 20	8 19	to Hamlet	NC	7 05	18 00	17 30	18 05
2 30	3 40	10 30	8 22	to Hamlet	NC	7 10	18 05	17 35	18 10
2 40	3 50	10 40	8 25	to Hamlet	NC	7 15	18 10	17 40	18 15
2 50	4 00	10 50	8 28	to Hamlet	NC	7 20	18 15	17 45	18 20
3 00	4 10	11 00	8 31	to Hamlet	NC	7 25	18 20	17 50	18 25
3 10	4 20	11 10	8 34	to Hamlet	NC	7 30	18 25	17 55	18 30
3 20	4 30	11 20	8 37	to Hamlet	NC	7 35	18 30	18 00	18 35
3 30	4 40	11 30	8 40	to Hamlet	NC	7 40	18 35	18 05	18 40
3 40	4 50	11 40	8 43	to Hamlet	NC	7 45	18 40	18 10	18 45
3 50	5 00	11 50	8 46	to Hamlet	NC	7 50	18 45	18 15	18 50
4 00	5 10	12 00	8 49	to Hamlet	NC	7 55	18 50	18 20	18 55
4 10	5 20	12 10	8 52	to Hamlet	NC	8 00	18 55	18 25	19 00
4 20	5 30	12 20	8 55	to Hamlet	NC	8 05	19 00	18 30	19 05
4 30	5 40	12 30	8 58	to Hamlet	NC	8 10	19 05	18 35	19 10
4 40	5 50	12 40	9 01	to Hamlet	NC	8 15	19 10	18 40	19 15
4 50	6 00	12 50	9 04	to Hamlet	NC	8 20	19 15	18 45	19 20
5 00	6 10	1 00	9 07	to Hamlet	NC	8 25	19 20	18 50	19 25
5 10	6 20	1 10	9 10	to Hamlet	NC	8 30	19 25	18 55	19 30
5 20	6 30	1 20	9 13	to Hamlet	NC	8 35	19 30	19 00	19 35
5 30	6 40	1 30	9 16	to Hamlet	NC	8 40	19 35	19 05	19 40
5 40	6 50	1 40	9 19	to Hamlet	NC	8 45	19 40	19 10	19 45
5 50	7 00	1 50	9 22	to Hamlet	NC	8 50	19 45	19 15	19 50
6 00	7 10	2 00	9 25	to Hamlet	NC	8 55	19 50	19 20	19 55
6 10	7 20	2 10	9 28	to Hamlet	NC	9 00	19 55	19 25	20 00
6 20	7 30	2 20	9						

SCHEDULES BETWEEN EASTERN CITIES AND ATLANTA, BIRMINGHAM AND THE SOUTHWEST THROUGH VIRGINIA AND THE CAROLINAS									
Read Down			Miles from Rich- mond	TABLE 11 (Continued)		Read Up			
8	23	3		DAILY TRAINS		4	2	34	
PM	AM	PM		LY Greenwood	AM	AM	PM	PM	
12 15	4 10	11 30	429 8	LY "LONG CANE CREEK		1 40	8 00	4 30	
12 30	4 30	12 25	440 3	LY "Abbeville		1 05	8 25	4 47	
112 57		12 43	453 8	LY "Little River		12 43	1 00		
			458 3	LY "Cahoon Falls					
			461 8	LY "Catawba River					
			470 3	LY "Hazard	GA.				
1 20	4 55	1 13	478 8	LY "Elberton		12 25	4 30	4 30	
			483	LY "North Road River					
			488	LY "Barkeley					
			493	LY "Coner					
			498	LY "Gallatin					
			504	LY "Fort					
2 10	5 57	2 30	510 4	LY "Oconee River					
			519 8	LY "Athens					
2 30	6 20	3 10	527 8	LY "Spartan					
			531 7	LY "Winder					
			536 2	LY "Athens					
			542 8	LY "Dacula					
			548 3	LY "Lawrenceville					
			554 7	LY "Gladys					
			558 1	LY "Lawson					
			564 7	LY "Athens					
			568 3	LY "Tucker					
			574 1	LY "Emory University					
3 40	7 05	3 30	583 3	LY "ATLANTA					
4 40	8 00		592 3	LY "ATLANTA					
			598 3	LY "Chattahoochee River					
			604 7	LY "Mickajack River					
			610 2	LY "Dallas					
			616 7	LY "Rockmart					
			622 3	LY "Cedarhurst					
			628 8	LY "Lawson					
			634 3	LY "Garden Springs (Ct.)	ALA.				
			640 8	LY "Floodman					
			646 3	LY "Marionville					
			652 8	LY "Wellington					
			658 3	LY "Chatham					
			664 8	LY "Coosa River					
			670 3	LY "Lawson					
			676 8	LY "Marionville					
			682 3	LY "Wellington					
			688 8	LY "Chatham					
			694 3	LY "Coosa River					
			700 8	LY "Lawson					
			706 3	LY "Marionville					
			712 8	LY "Wellington					
			718 3	LY "Chatham					
			724 8	LY "Coosa River					
			730 3	LY "Lawson					
			736 8	LY "Marionville					
			742 3	LY "Wellington					
			748 8	LY "Chatham					
			754 3	LY "Coosa River					
			760 8	LY "Lawson					
			766 3	LY "Marionville					
			772 8	LY "Wellington					
			778 3	LY "Chatham					
			784 8						

- a. Stops to receive and discharge passengers for and from Raleigh, Birmingham and beyond.
- b. Stops on signal to receive or discharge revenue passengers.
- c. Stops to discharge passengers from Birmingham and beyond.
- d. Stops to receive and discharge passengers for or from Washington and beyond.
- e. Stops to discharge passengers from Raleigh and beyond; to receive for Columbus, Monroe and beyond.
- f. Stops to discharge passengers on notice to Conductor; to receive passengers on signal or on notice to ticket agent.
- g. Stops to receive and discharge passengers for and from Atlanta, Birmingham and beyond.
- h. Stops to receive and discharge passengers for and from Monroe and beyond.
- k. Stops to receive and discharge passengers for and from Raleigh, Atlanta and beyond.
- m. Stops on Saturdays and Sundays only to receive passengers for Birmingham.
- n. Stops to receive passengers for points east of Monroe.
- q. Portsmouth-Atlanta coach 2B-B, sleeper B-3, handled on Train 17 Portsmouth to Raleigh, then on Train 33 to Atlanta.
- a. Atlanta-Portsmouth coach 2B-B and sleeper B-4, handled on Train 34 Atlanta to Raleigh, then on Train 18 to Portsmouth.
- v. Stops to receive and discharge passengers for and from points east of Norfolk and for and from points south and west of Hamlet.
- o. Stops to discharge passengers from Atlanta and beyond and to receive passengers for points on the Portsmouth line.
- a. Does not run on Saturday nights.
- f. Does not run on Sundays.
- g. Does not run on Sundays and Holidays.
- g. Stops only to discharge passengers.

② Buses of Elizabeth River Tunnel Commission pick up passengers at street stops in Norfolk enroute Portsmouth on City Hall Ave. at Brewer St.; on Plume St. at Norfolk City Hall Annex; on Rume at Bank St.; on Church St. at City Hall Ave., and make stop in Portsmouth on Crawford St. one block west of Seaboard Station, on schedules of approximately every five minutes.

Buses of Elizabeth River Tunnel Commission stop in Portsmouth on Crawford St. at corner of King St. (one block west of Seaboard Station) enroute Norfolk and discharge in Norfolk at City Hall Ave. and Brewer Sts., on schedule of approximately every five minutes.

NEW YORK, WASHINGTON, RICHMOND AND JACKSONVILLE

[15]

TABLE 1
 DAILY TRAINS

Train No.	New York	Washington	Richmond	Jacksonville	Days of Week	Time		Notes
						Depart	Arrive	
1	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
2	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
3	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
4	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
5	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
6	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
7	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
8	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
9	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
10	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
11	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
12	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
13	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
14	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
15	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
16	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
17	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
18	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
19	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
20	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
21	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
22	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
23	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
24	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
25	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
26	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
27	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	
28	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Mon, Wed, Fri	11:00 PM	11:00 PM	
29	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Tue, Thu, Sat	11:00 PM	11:00 PM	
30	11:00 PM	11:00 PM	11:00 PM	11:00 PM	Sun	11:00 PM	11:00 PM	

[fol. 97]

EXHIBIT 12 TO PETITION

Source:

Atlantic Coast Line Railroad
 Time Table Folder, dated December
 15, 1960.

**TIME TABLE OF ATLANTIC COAST LINE RAILROAD
PASSENGER TRAINS SERVING GOLDSBORO, N. C.**

NEW YORK, WASHINGTON, RICHMOND AND WILMINGTON					
Head down		TABLE 3		Head up	
178 77 Daily	Miles	PER Train E BSP Train E ACL Train E For equipment see table P		130 78 Daily	
PM		Eastern Standard Time		AM	
1:30	0	Lv New York (Penn. Sta.)	PER	Ar	10:55
2:00	10	Lv New York	"	Ar	10:39
2:45	38	Lv Trenton	"	Ar	9:54
3:14	86	Lv New Philadelphia	"	Ar	9:23
3:23	91	Lv Philadelphia (Penn. Stop 30th St.)	"	Ar	9:15
3:54	118	Lv Wilmington	"	Ar	8:44
4:33	187	Lv Baltimore (Penn. Sta.)	"	Ar	7:45
5:38	227	Ar Washington	"	Lv	7:00
6:18	227	Lv Washington	BSP	Ar	6:15
6:40	341	Ar Richmond, Va.	"	Lv	5:55
6:50	341	Lv Richmond, Va.	ACL	Ar	5:30
7:30	348	Lv Petersburg	"	Ar	2:40
8:50	409	Lv Emporia, Va.	"	Ar	1:52
10:05	429	Ar Weldon, N. C.	"	Lv	1:25
11:35	444	Ar Rocky Mount	"	Lv	12:50
3:45	444	Lv Rocky Mount	"	Ar	11:00
4:02	475	Lv En City	"	Ar	11:22
4:21	481	Lv Wilson	"	Lv	11:10
4:34	487	Lv Black Creek	"	Lv	10:44
4:47	494	Lv Fremont	"	Ar	10:32
4:54	497	Lv Pleville	"	Lv	10:25
5:31	505	Ar Goldsboro	"	Lv	10:04
5:31	505	Lv Goldsboro	"	Ar	10:04
5:59	519	Lv Mount Olive	"	Lv	9:30
6:05	523	Lv Calypso	"	Ar	9:23
6:10	524	Lv Faison	"	Lv	9:18
6:31	534	Lv Warsaw	"	Lv	8:58
6:47	542	Lv Magnolia	"	Lv	8:48
6:54	547	Lv Rosehill	"	Lv	8:38
7:03	551	Lv Tazewell	"	Ar	8:31
7:17	553	Lv Wallace	"	Lv	8:27
7:15	554	Lv Willard	"	Ar	8:21
7:21	560	Lv Warfa	"	Lv	8:14
7:35	567	Lv Burgaw	"	Lv	8:07
7:50	575	Lv Rocky Point	"	Ar	7:54
7:59	580	Lv Castle Hayne	"	Lv	7:44
8:30	589	Ar Wilmington, N. C.	"	Ar	7:30

REFERENCE NOTES

- (1) Flag stop to receive or discharge passengers.
- (2) Transfer between Petersburg (A.C.L. Passenger Station) and Petersburg (Appomattox Street Station) made by taxi upon payment of taxi fare.
- (3) New York to Wilmington sleeper operates in PER train 101, BSP train 91 and ACL train 91 New York to Rocky Mount, leaving New York 3:30 PM and Washington 8:20 PM. For schedule see table D on page 9.
- (4) Atlantic Greyhound bus leaves Wilmington bus terminal 12:30 PM, arriving Myrtle Beach 2:55 PM.
- (5) Atlantic Greyhound bus leaves Myrtle Beach 3:22 PM, arriving Wilmington bus terminal 4:35 PM.

Source:

Atlantic Coast Line Railroad Timetable Folder,
dated December 15, 1960.

[fol. 98]

EXHIBIT 13 TO PETITION

98

90

Charlotte—Raleigh—Norfolk

Source:

Russell's Official National Motor Coach Guide, January 1961

RAILWAYS EASTERN LINES

Norfolk—Raleigh—Charlotte

READ DOWN

8100 10-30-60		Norfolk, Va. (4120)		Norfolk, Va.		Portsmouth		Norfolk		Holland		Franklin		Courtland		Boydine		Branchville		Whaleyville, Va.		Winton, N.C.		Abeokute		Aulander		Hurfreshere		Woodland		Rich Square		Rich Square		Scotland Neck		Leggett		Tobacco		Rocky Mount		Rocky Mount		Stanhope		Nashville		Mooresville		Spring Lake		Wendell		Cape Fear		Lenoir		Faison		Bessemer Rapids		Bessemer Rapids		Littlesville		Macon		Warrenton		Brinkleyville		Conterville		Louisburg		Raleigh, N.C.		Raleigh, N.C.		Oak Grove		Cary		Morrisville		Holmes		Bethesda		Durham		Durham		Lower Grove		School Hill		Carrboro		Blindford		Blindford		Haw River		Orphan		Newington		Ella College		Olinville		Bedala		Greensboro		Greensboro		Deep River		Jamestown		High Point		High Point		Thomasville		Lexington		Spencer		Gibbsburg		Gibbsburg		China Grove		Leadville		Kannapolis		Arlene		Concord		Meeking Co. Home		Harrisburg		Newell		Charlotte, N.C.		Run Numbers	
10-30-60		Norfolk, Va. (4120)		Norfolk, Va.		Portsmouth		Norfolk		Holland		Franklin		Courtland		Boydine		Branchville		Whaleyville, Va.		Winton, N.C.		Abeokute		Aulander		Hurfreshere		Woodland		Rich Square		Rich Square		Scotland Neck		Leggett		Tobacco		Rocky Mount		Rocky Mount		Stanhope		Nashville		Mooresville		Spring Lake		Wendell		Cape Fear		Lenoir		Faison		Bessemer Rapids		Bessemer Rapids		Littlesville		Macon		Warrenton		Brinkleyville		Conterville		Louisburg		Raleigh, N.C.		Raleigh, N.C.		Oak Grove		Cary		Morrisville		Holmes		Bethesda		Durham		Durham		Lower Grove		School Hill		Carrboro		Blindford		Blindford		Haw River		Orphan		Newington		Ella College		Olinville		Bedala		Greensboro		Greensboro		Deep River		Jamestown		High Point		High Point		Thomasville		Lexington		Spencer		Gibbsburg		Gibbsburg		China Grove		Leadville		Kannapolis		Arlene		Concord		Meeking Co. Home		Harrisburg		Newell		Charlotte, N.C.		Run Numbers	
10-30-60		Norfolk, Va. (4120)		Norfolk, Va.		Portsmouth		Norfolk		Holland		Franklin		Courtland		Boydine		Branchville		Whaleyville, Va.		Winton, N.C.		Abeokute		Aulander		Hurfreshere		Woodland		Rich Square		Rich Square		Scotland Neck		Leggett		Tobacco		Rocky Mount		Rocky Mount		Stanhope		Nashville		Mooresville		Spring Lake		Wendell		Cape Fear		Lenoir		Faison		Bessemer Rapids		Bessemer Rapids		Littlesville		Macon		Warrenton		Brinkleyville		Conterville		Louisburg		Raleigh, N.C.		Raleigh, N.C.		Oak Grove		Cary		Morrisville		Holmes		Bethesda		Durham		Durham		Lower Grove		School Hill		Carrboro		Blindford		Blindford		Haw River		Orphan		Newington		Ella College		Olinville		Bedala		Greensboro		Greensboro		Deep River		Jamestown		High Point		High Point		Thomasville		Lexington		Spencer		Gibbsburg		Gibbsburg		China Grove		Leadville		Kannapolis		Arlene		Concord		Meeking Co. Home		Harrisburg		Newell		Charlotte, N.C.		Run Numbers	

All trips operate daily unless otherwise noted.

Source:

Russell's Official National Motor Coach Guide, January 1961

COLUMBIA—SUMTER—FLORENCE—MYRTLE BEACH

COLUMBIA — SUMTER — FLUORENCE — MYRTLE BEACH										READ UP									
321A										321A									
1000 1100 1200 1300 1400 1500 1600 1700 1800 1900 2000 2100 2200 2300 2400 2500 2600 2700 2800 2900 3000 3100 3200 3300 3400 3500 3600 3700 3800 3900 4000 4100 4200 4300 4400 4500 4600 4700 4800 4900 5000 5100 5200 5300 5400 5500 5600 5700 5800 5900 6000 6100 6200 6300 6400 6500 6600 6700 6800 6900 7000 7100 7200 7300 7400 7500 7600 7700 7800 7900 8000 8100 8200 8300 8400 8500 8600 8700 8800 8900 9000 9100 9200 9300 9400 9500 9600 9700 9800 9900										1000 1100 1200 1300 1400 1500 1600 1700 1800 1900 2000 2100 2200 2300 2400 2500 2600 2700 2800 2900 3000 3100 3200 3300 3400 3500 3600 3700 3800 3900 4000 4100 4200 4300 4400 4500 4600 4700 4800 4900 5000 5100 5200 5300 5400 5500 5600 5700 5800 5900 6000 6100 6200 6300 6400 6500 6600 6700 6800 6900 7000 7100 7200 7300 7400 7500 7600 7700 7800 7900 8000 8100 8200 8300 8400 8500 8600 8700 8800 8900 9000 9100 9200 9300 9400 9500 9600 9700 9800 9900									
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WINSTON-SALEM — RALEIGH — WILMINGTON — CHARLESTON

READ DOWN										WINSTON-SALEM - RALEIGH - WILMINGTON - CHARLOTTE										READ UP																			
										Run Numbers																													
										13-4-50										EST																			
1310	1311	1312	1313	1314	1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332	1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349
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[fol. 101]

EXHIBIT 15 TO PETITION

New York—Richmond—Raleigh—Fayetteville—Jacksonville

All trips operate daily unless otherwise noted.

102 56



All trips operate daily unless otherwise noted.

95

GREENSBORO—RALEIGH—ROCKY MOUNT—
GOLDSBORO—NEW BERN—CHERRY POINT—
HAUFORT

[illegible][illegible]

NEW BERN—CHERRY POINT—MOREHEAD CITY—BEAUFORT															
EASTBOUND—READ DOWN							D-34-38		WESTBOUND—READ UP						
700 E21 N	12	13	10	700 E21 N	12	13	← Bus Numbers →		700 E21 N	12	13	10	700 E21 N	12	13
							(NET) 3426								
							L New Bern, N.C. _____								
							Oranthen _____								
							Riverdale _____								
							Oranthen _____								
							L Cherry Point _____								
							L Cherry Point _____								
							Newport _____								
							Morehead City _____								
							Beaufort, N.C. _____								

DOWN		1-4-65		UP	
025 Set.	001 Set.	← Run Numbers →		001 Set.	025 Set.
		(EST) 3426A			
1 2 3 4 5 6 7 8 9 10 11 12		Isle of St. Marks Island, N.C.		1 2 3 4 5 6 7 8 9 10 11 12	

READ DOWN				ORIENTAL		READ UP			
201 Sat.	220 Sat.	221 Sat.	225 Sat.	Room Number		201 Sat.	220 Sat.	221 Sat.	225 Sat.
				3-1-26 3427 (INT)					
				Lr Lowland, N.C.					
				Hoboken					
				Vandoren					
				Oriental					
				Merritt					
				New York					
				Allison					
				Grassboro					
				Rushboro					
				Bridgeton					
				New Bern					
				Grassboro					
				Aurora					
				Edwards					
				Cheswinty					
				Washington, N.C.					

Bus		Bus Numbers		Bus	
(EST)		3427A		10-25-58	
7 30		Leicester, N.C.			
7 40		Morhead City			
7 50		Dog Track			
8 00		Bogue			
8 15		Swansboro			
8 25		Hubert			
8 35		Piney Grove			
8 40		Camp Lejeune Main Gate			
8 50		Jacksonville, N.C.			
9 00		Jacksonville, N.C.			
9 15		Wilmington, N.C.			
10 00		Le Jacksonville, N.C.	(EST)	(GCC)	8 25
8 55		Charlotte, N.C.	(EST)	(GCC)	10 15

Sat.—Saturday only.
 Su.—Daily except Sunday.
 H.—Daily except Saturday, Sunday and Holidays.
 AM—Light Face. PM—Gold Face.
 All trips operate daily unless otherwise noted.
 Ch.—Thru Coach Charlotte-Baltimore.

EXHIBIT 18 TO PETITION

Source: Russell's Official National Motor Coach Guide, dated February 1961.

EXHIBIT NO.

105

SOUTHBOUND

WILD BOW
 10000 January 22, 1951
 (West of Reno)
 10000 (West of Reno) 10000

SOUTHBOUND			Crews		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V		V	
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^cAs New York—From New York Airways—30 minutes.
At Atlanta—To and From downtown via Atlanta-Habington
Airways.

TYPICAL CAPITAL NIGHTCOACH FARES

NEW YORK	to NEW ORLEANS	\$55.50
NEW YORK	to CHICAGO	\$26.00
NEW YORK	to BIRMINGHAM	\$41.00
NEW YORK	to ATLANTA	\$35.05
WASHINGTON	to ATLANTA	\$28.50

WASHINGTON	to NEW ORLEANS	\$47.15
WASHINGTON	to CHICAGO	\$58.35
MINNEAPOLIS/ST. PAUL	to CHICAGO	\$71.80
MINNEAPOLIS/ST. PAUL	to DETROIT	\$75.00
MINNEAPOLIS/ST. PAUL	to NEW YORK	\$48.10

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EXHIBIT 20 TO PETITION

Source:

Capital Airlines Timetable
Folder, dated January 23, 1961

1940 BIRTH
 Died January 21, 1951
 Cause As Above
 All Evidence Lead OF A.M. 2000 Time

[illegible]

*At New York—From New York Always—30 minutes



RESORT MOTEL

ATLANTA'S LARGEST & FINEST

2

2 blocks from downtown Peachtree St.

For Reservations, Phone MURRAY 8-1622-TWX AT 104



**Fly from East Gate 21 to Motel via
Atlanta Helicopter Airways, Inc. Scheduled Flights**

Page 18

Source:

Capital Airlines Timetable
Folder, dated January 23, 1961

EXHIBIT NO.

66

[fol. 107]

NORTHBOUND

READ DOWN
 Chicago, January 25, 1933
 (Insert An Item)
 All Students Learn STAMMERS True

NORTHBOUND		SOUTHBOUND		NEW YORK		ATLANTA		MEMPHIS		MOBILE		BIRMINGHAM		NASHVILLE		KNOXVILLE		CHATTANOOGA		COLUMBIA		INDIANAPOLIS		CINCINNATI		ST. LOUIS		KANSAS CITY		DENVER		SALT LAKE CITY		PORTLAND		SEASIDE		SAN FRANCISCO		LOS ANGELES		SAN DIEGO		SAN JOSE		SAN CARLOS		SAN ANTONIO		HOUSTON		DALLAS		FORT WORTH		OKLAHOMA CITY		TULSA		MEMPHIS		KNOXVILLE		NASHVILLE		ATLANTA		NEW YORK	
NEW YORK		ATLANTA		MEMPHIS		MOBILE		BIRMINGHAM		NASHVILLE		KNOXVILLE		CHATTANOOGA		COLUMBIA		INDIANAPOLIS		CINCINNATI		ST. LOUIS		KANSAS CITY		DENVER		SALT LAKE CITY		PORTLAND		SEASIDE		SAN FRANCISCO		LOS ANGELES		SAN DIEGO		SAN JOSE		SAN CARLOS		SAN ANTONIO		HOUSTON		DALLAS		FORT WORTH		OKLAHOMA CITY		TULSA		MEMPHIS		KNOXVILLE		NASHVILLE		ATLANTA		NEW YORK					
NEW YORK	ATLANTA	MEMPHIS	MOBILE	BIRMINGHAM	NASHVILLE	KNOXVILLE	CHATTANOOGA	COLUMBIA	INDIANAPOLIS	CINCINNATI	ST. LOUIS	KANSAS CITY	DENVER	SALT LAKE CITY	PORTLAND	SEASIDE	SAN FRANCISCO	LOS ANGELES	SAN DIEGO	SAN JOSE	SAN CARLOS	SAN ANTONIO	HOUSTON	DALLAS	FORT WORTH	OKLAHOMA CITY	TULSA	MEMPHIS	KNOXVILLE	NASHVILLE	ATLANTA	NEW YORK	ATLANTA	MEMPHIS	MOBILE	BIRMINGHAM	NASHVILLE	KNOXVILLE	CHATTANOOGA	COLUMBIA	INDIANAPOLIS	CINCINNATI	ST. LOUIS	KANSAS CITY	DENVER	SALT LAKE CITY	PORTLAND	SEASIDE	SAN FRANCISCO	LOS ANGELES	SAN DIEGO	SAN JOSE	SAN CARLOS	SAN ANTONIO	HOUSTON	DALLAS	FORT WORTH	OKLAHOMA CITY	TULSA	MEMPHIS	KNOXVILLE	NASHVILLE	ATLANTA	NEW YORK					
NEW YORK	ATLANTA	MEMPHIS	MOBILE	BIRMINGHAM	NASHVILLE	KNOXVILLE	CHATTANOOGA	COLUMBIA	INDIANAPOLIS	CINCINNATI	ST. LOUIS	KANSAS CITY	DENVER	SALT LAKE CITY	PORTLAND	SEASIDE	SAN FRANCISCO	LOS ANGELES	SAN DIEGO	SAN JOSE	SAN CARLOS	SAN ANTONIO	HOUSTON	DALLAS	FORT WORTH	OKLAHOMA CITY	TULSA	MEMPHIS	KNOXVILLE	NASHVILLE	ATLANTA	NEW YORK	ATLANTA	MEMPHIS	MOBILE	BIRMINGHAM	NASHVILLE	KNOXVILLE	CHATTANOOGA	COLUMBIA	INDIANAPOLIS	CINCINNATI	ST. LOUIS	KANSAS CITY	DENVER	SALT LAKE CITY	PORTLAND	SEASIDE	SAN FRANCISCO	LOS ANGELES	SAN DIEGO	SAN JOSE	SAN CARLOS	SAN ANTONIO	HOUSTON	DALLAS	FORT WORTH	OKLAHOMA CITY	TULSA	MEMPHIS	KNOXVILLE	NASHVILLE	ATLANTA	NEW YORK					

TYPICAL FLORIDA COACH FARES

AKRON/CANTON	to MIAMI	\$58.85	BUFFALO	to MIAMI	\$67.15	PITTSBURGH	to MIAMI	\$47.15	BUFFALO	to MIAMI	\$58.75
YOUNGSTOWN	to MIAMI	\$59.85	BUFFALO	to TAMPA	\$59.99	CLEVELAND	to TAMPA	\$44.06	BUFFALO	to TAMPA	\$52.29
PITTSBURGH	to MIAMI	\$53.29	ROCHESTER	to MIAMI	\$68.00	PITTSBURGH	to TAMPA	\$48.05	ROCHESTER	to MIAMI	\$65.00
PITTSBURGH	to TAMPA	\$48.48	ROCHESTER	to TAMPA	\$61.29				ROCHESTER	to TAMPA	\$58.45

ALL FARES SUBJECT TO 10% FEDERAL TAX

Source:

Capital Airlines Timetable
Folder dated January 23, 1961

108

EXHIBIT NO.

The Route of the Pacemakers

[illegible]

EXHIBIT No.

**COMPARISON OF AIR LINE TRAFFIC DEPARTING
FROM GREENSBORO-HIGH POINT AND RALEIGH-
DURHAM AIRPORTS YEARS 1949 AND 1959**

GREENSBORO-HIGH POINT AIRPORT

<u>Calendar Year</u>	<u>Aircraft Departures</u>	<u>Passengers</u>	<u>Average No. Passengers Boarding Departing Planes</u>	<u>Air Mail (Tons)</u>	<u>Air Cargo (Tons)</u>
1959	12,731	92,721	7.3	214.6	452.5
1949	9,854	25,479	2.6	105.6	146.4
Percent of Increase 1949-1959	29.2%	263.9%		103.2%	209.1%

RALEIGH-DURHAM AIRPORT

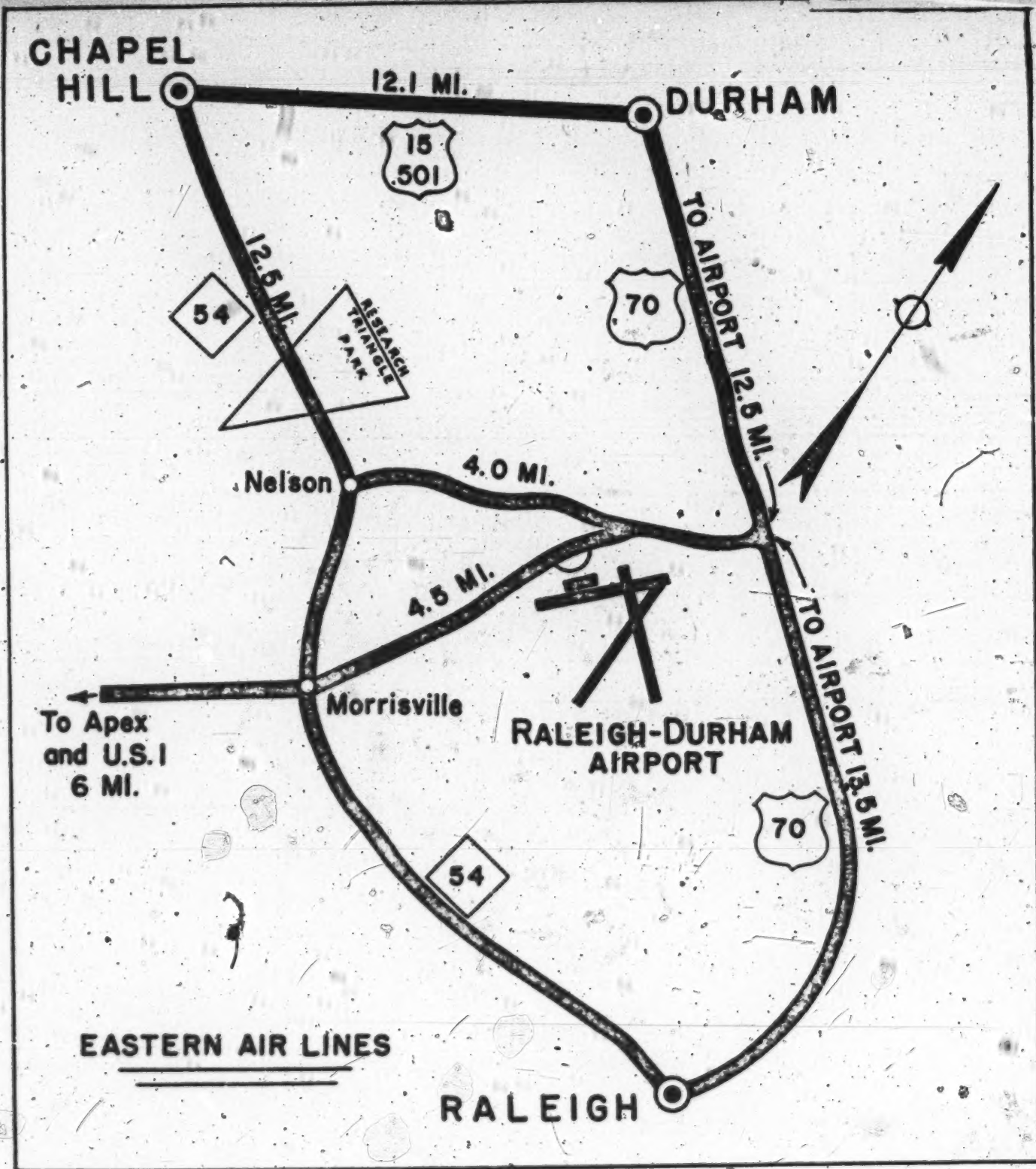
<u>Calendar Year</u>	<u>Aircraft Departures</u>	<u>Passengers</u>	<u>Average No. Passengers Boarding Departing Planes</u>	<u>Air Mail (Tons)</u>	<u>Air Cargo (Tons)</u>
1959	11,480	131,644	11.4	151.8	361.2
1949	9,603	38,791	4.0	87.1	134.1
Percent of Increase 1949-1959	19.5%	239.4%		74.3%	169.4%

Source:

Air Commerce Traffic Pattern, Calendar Year 1959, dated June 1960, Federal Aviation Agency and Enplaned Airline Traffic by Community, Calendar Year 1949, dated June 1950, Civil Aeronautics Administration, U. S. Department of Commerce.

[fol. 111]

EXHIBIT 22 TO PETITION



[fol. 112]

EXHIBIT 23 TO PETITION

urce:

Eastern Air Lines Timetable, dated
February 1, 1961.

112

SOUTHERN RAILWAY COMPANY

EXHIBIT 24 TO PETITION

PASSENGERS HANDLED ON TRAIN 13 (OPERATING DAILY GOLDSBORO, N. C. TO GREENSBORO, N. C.)
 YEAR 1959 - 365 TRIPS

		TO																								
		N. C.																								
		On	D/A*	Off	D/A*	Rose,	Princeton,	Pine Level,	Selma,	Wilsons Mills,	Clayton,	Garner,	Raleigh,	Cary,	Durham,	Glenn,	Hillsboro,	Etland,	Mebane,	Haw River,	Graham,	Burlington,	Elon College,	Gibsonville,	McLeansville,	Greensboro,
Goldsboro,	N.C.	1,634	4.5	-	-	1	144	16	382	7	1	2	455	2	112		17		13	2	2	22				456
Rose,	"			1																						
Princeton,	"	73	.2	144	.4			1	38				11		10				1			1				11
Pine Level,	"	28	.1	17					9		3		2		9											
Selma,	"	354	1.0	429	1.2					5	41	11	97		123		4					11	1			61
Wilsons Mills,	"	34	.1	12							2		15		13											4
Clayton,	"	164	.4	47	.1								84	2	50							7				16
Garner,	"	43	.1	18								5	35	1	5							1				1
Raleigh,	"	754	2.1	699	1.9									100	185	1		7	7	1		24	5	1		423
Cary,	"	8	-	105	.3										3											5
Durham,	"	2,025	5.6	510	1.4											33	135	15	28			56	2	2		1,754
Glenn,	"	2	-	34	.1																	2				
Hillsboro,	"	59	.2	156	.4														8	1		5		1		44
Etland,	"	1	-	22	.1																					1
Mebane,	"	76	.2	57	.2																1	28	1			46
Haw River,	"	3	-	4																		3				
Graham,	"	5	-	3																						5
Burlington,	"	1,171	3.2	160	.4																		7	114		1,050
Elon College,	"	15	-	16																						15
Gibsonville,	"	18	-	117	.3																					18
McLeansville,	"	-	-	1																						
Greensboro,	"	-	-	3,910	10.7																					
Total		6,162	17.7	6,462	17.7	1	144	17	429	12	47	18	699	105	510	34	156	22	57	4	3	160	16	117	1	3,910

* Daily Average

SOUTHERN RAILWAY COMPANY

[fol. 114]

106

PASSENGERS HANDLED ON TRAIN 16 (OPERATING DAILY GREENSBORO, N. C. TO GOLDSBORO, N. C.)
YEAR 1959 - 365 TRIPS

FROM

TO

		On	D/A*	Off	D/A*	McLeansville, N. C.	Gibsonville,	Elon College,	Burlington,	Graham,	Haw River,	Mebane,	Erland,	Hillsboro,	Glenn,	Durham,	Morrisville,	Raleigh,	Garner,	Clayton,	Wilsons Mills,	Selma,	Pine Level,	Princeton,	Goldsboro,
Greensboro, N.C.		4560	12.5	-	-	1	57	78	1152	14	2	46	8	25	1	2252		473	2	7		31	2	10	399
McLeansville,		-	-	1	-													1							
Gibsonville,		19	.1	57	.2				18									1							
Elon College,		3	-	78	.2													3							
Burlington,		134	.4	1170	3.2					1	19	6		11		37		21		1		16		1	21
Graham,		-	-	15	-																				
Haw River,		17	-	21	.1							10				4		1							2
Mebane,		107	.3	62	.2									5		85		9							8
Erland,		17	-	8	-											8		9							
Hillsboro,		108	.3	41	.1											97	1	1					3		6
Glenn,		29	.1	1	-											28		1							
Durham,		1107	3.0	2511	6.9												1	920	2	9	11	53	12	7	92
Morrisville,		1	-	2	-																				1
Garner,		37	.1	-	-													35		1					1
Raleigh,		848	2.3	1474	4.0														6	415	15	20	1	4	387
Clayton,		43	.1	10	-															6		33	1	2	1
Wilsons Mills,		116	.3	439	1.2																5	107	1		3
Selma,		13	-	31	.1																	2	11		
Pine Level,		196	.5	262	.7																		5	10	181
Princeton,		17	-	36	.1																			2	15
Goldsboro,		417	1.1	36	.1																				417
Total		7789	21.3	7789	21.3	1	57	78	1170	15	21	62	8	41	1	2511	2	1474	10	439	31	262	36	36	1534

* Daily Average

SOUTHERN RAILWAY COMPANY

[fol. 115]

PASSENGERS HANDLED ON TRAIN 13 (OPERATING DAILY GOLDSBORO, N. C. TO GREENSBORO, N. C.)
YEAR 1960 - 366 TRIPS

FROM

TO

	On	D/A *	Off	D/A *	Rose, N.C.	Princeton, N.C.	Pine Level, N.C.	Selma, N.C.	Wilsons Mills, N.C.	Clayton, N.C.	Garner, N.C.	Raleigh, N.C.	Cary, N.C.	Durham, N.C.	Glenn, N.C.	Hillsboro, N.C.	Erland, N.C.	Mebane, N.C.	Haw River, N.C.	Graham, N.C.	Burlington, N.C.	Elon College, N.C.	Gibsonville, N.C.	Greensboro, N.C.
Goldsboro, N.C.	989	2.7	-	-	2	130	8	159	17	4		125	2	111	1	10		8			19	1		392
Rose, N.C.	1	-	2	-									1											
Princeton, N.C.	75	.2	130	.4			10	33	1		3	1		8				3			6			10
Pine Level, N.C.	18	-	18	-				9				1		8										
Selma, N.C.	340	.9	201	.5					5	12		136		97		6		1			14			69
Wilsons Mills, N.C.	29	.1	23	.1						1		11		13										4
Clayton, N.C.	124	.3	17	-							3	75		25				2			7			12
Garner, N.C.	57	.2	6	-								22	4	27										4
Raleigh, N.C.	826	2.3	371	1.0									63	162	2	2	4	4		3	38		4	544
Cary, N.C.	25	.1	70	.2										2										20
Durham, N.C.	2929	8.0	453	1.2											50	248	5	19	11		36	15		2545
Glenn, N.C.	1	-	53	.1																	1			
Hillsboro, N.C.	51	.1	266	.7														1	1		13	1		35
Erland, N.C.	-	-	12	-																				
Mebane, N.C.	117	.3	38	.1																	22	.2	1	92
Haw River, N.C.	1	-	12	-																				1
Graham, N.C.	4	-	3	-																				4
Burlington, N.C.	1464	4.0	156	.4																		38	135	1291
Elon College, N.C.	17	-	57	.2																				17
Gibsonville, N.C.	8	-	140	.4																				8
Greensboro, N.C.	-	-	5048	13.8																				
Total	7076	19.3	7076	19.3	2	130	18	201	23	17	6	371	70	453	53	266	12	38	12	5	156	57	140	5048

* Daily Average

SOUTHERN RAILWAY COMPANY

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PASSENGERS HANDLED ON TRAIN 16 (OPERATING DAILY GREENSBORO, N. C. TO GOLDSBORO, N. C.)
YEAR 1960 - 366 TRIPS

FM

TO

	<u>On</u>	<u>D/A*</u>	<u>Off</u>	<u>D/A*</u>	McLeansville, N.C.	Gibsonville, N.C.	Elon College, N.C.	Burlington, N.C.	Graham, N.C.	Haw River, N.C.	Mebane, N.C.	Effland, N.C.	Hillsboro, N.C.	Glenn, N.C.	Durham, N.C.	Morrisville, N.C.	Cary, N.C.	Raleigh, N.C.	Garner, N.C.	Clayton, N.C.	Wilson's Mills, N.C.	Selma, N.C.	Pine Level, N.C.	Princeton, N.C.	Goldsboro, N.C.	
Greensboro, N.C.	5,101	13.9	-	-	2	17	51	1,260	4	12	61	1	41	1	2,524			633	3	5	3	40		80	362	
McLeansville, N.C.	-	-	2	-																						
Gibsonville, N.C.	3	-	17	-				1							2											
Elon College, N.C.	19	.1	51	.1				14			1				3				1							
Burlington, N.C.	112	.3	1,275	3.5						13	1		10	2	18				29	1			7		3	28
Graham, N.C.	4	-	4	-											1				3							
Haw River, N.C.	4	-	25	.1											2				2							
Mebane, N.C.	68	.2	63	.2								1	5		39				12	2			1		8	
Effland, N.C.	14	-	2	-									2		4				2							
Hillsboro, N.C.	127	.3	58	.2										1	107				1		1		5		12	
Glenn, N.C.	14	-	4	-											12				2							
Durham, N.C.	775	2.1	2,712	7.4												4			579	2	25	7	74	4	10	63
Morrisville, N.C.	-	-	4	-																						
Cary, N.C.	14	-	13	-															10	1	1				2	
Raleigh, N.C.	667	1.8	1,274	3.5															8	332	11	20			296	
Garner, N.C.	49	.1	17	-																9		37		3		
Clayton, N.C.	174	.5	374	1.0																	9	158	3		4	
Wilson's Mills, N.C.	4	-	30	.1																		1	1		2	
Selma, N.C.	147	.4	343	.9																			12	39	105	
Pine Level, N.C.	26	.1	20	.1																				7	19	
Princeton, N.C.	378	1.0	133	.4																					378	
Goldsboro, N.C.	-	-	1,279	3.5																						
Total	7,700	21.0	7,700	21.0	2	17	51	1,275	4	25	63	2	58	4	2,712	4	13	1274	17	374	30	343	20	133	1,279	

* Daily Average

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SOUTHERN RAILWAY COMPANY

Passenger Traffic Statistics

Trains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.

Year 1959

	<u>Trains 13 and 16</u>	<u>Train No. 13</u>	<u>Train No. 16</u>
Number of Trips Operated	730	365	365
Trip Mileage	129	129	129
Total Train Miles Operated	94,170	47,085	47,085
Total Number of Passengers Carried	14,251	6,462	7,789
Total Passenger Miles	643,398	306,348	337,050
Total Passenger Revenue	\$ 19,839	\$ 9,383	\$ 10,456
Average Number of Passengers Per Trip	19.5	17.7	21.3
Average Miles Per Passenger	45.1	47.4	43.3
Average Revenue Per Passenger (Cents)	139.211	145.203	134.241
Average Passenger Revenue Per Train Mile (Cents)	21.067	19.928	22.207
Average Passenger Miles Per Train Mile	6.83	6.51	7.16

[fol. 117]

EXHIBIT 25 TO PETITION

SOUTHERN RAILWAY COMPANY

Passenger Traffic Statistics

Trains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.

Year 1960

	<u>Trains 13 and 16</u>	<u>Train No. 13</u>	<u>Train No. 16</u>
Number of Trips Operated	732	366	366
Trip Mileage	129	129	129
Total Train Miles Operated	94,428	47,214	47,214
Total Number of Passengers Carried	14,776	7,076	7,700
Total Passenger Miles	691,982	337,898	354,084
Total Passenger Revenue	\$ 21,135	\$ 10,394	\$ 10,741
Average Number of Passengers Per Trip	20.2	19.3	21.0
Average Miles Per Passenger	46.8	47.8	46.0
Average Revenue Per Passenger (Cents)	143.036	146.891	139.494
Average Passenger Revenue Per Train Mile (Cents)	22.382	22.015	22.750
Average Passenger Miles Per Train Mile	7.33	7.16	7.50

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[fol. 119]

SOUTHERN RAILWAY COMPANYEXHIBIT 26 TO PETITIONTrains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.Passenger Traffic Statistics

Year	Train No. 13					Train No. 16					Total - Trains Nos. 13 and 16				
	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip
1948	366	34,094	\$35,373	93.15	\$96.65	366	22,645	\$25,161	61.87	\$68.75	732	56,739	\$60,534	77.51	\$82.70
1949	365	24,184	30,625	66.26	83.90	365	15,904	19,732	43.57	54.06	730	40,088	50,357	54.92	68.98
1950	325	15,578	21,595	47.93	66.45	325	11,046	14,142	33.99	43.51	650	26,624	35,737	40.96	54.98
1951	365	16,904	24,685	46.31	67.63	365	12,265	15,772	33.60	43.21	730	29,169	40,457	39.96	55.42
1952	366	14,537	22,549	39.72	61.61	366	11,138	15,628	30.43	42.70	732	25,675	38,177	35.08	52.15
1953	365	12,187	18,521	33.39	50.74	365	9,921	14,131	27.18	38.72	730	22,108	32,652	30.28	44.73
1954	365	10,437	15,792	28.60	43.27	365	8,433	11,869	23.10	32.52	730	18,870	27,661	25.85	37.89
1955	365	10,847	16,344	29.72	44.78	365	9,601	13,279	26.30	36.38	730	20,448	29,623	28.01	40.58
1956	366	10,915	17,389	29.82	47.51	366	9,317	12,876	25.46	35.18	732	20,232	30,265	27.64	41.35
1957	365	7,964	12,726	21.82	34.87	365	7,794	11,117	21.35	30.46	730	15,758	23,843	21.59	32.66
1958	365	8,082	12,942	22.14	35.46	365	8,337	12,213	22.84	33.46	730	16,419	25,155	22.49	34.46
1959	365	6,462	9,383	17.70	25.71	365	7,789	10,456	21.34	28.65	730	14,251	19,839	19.52	27.18
1960	366	7,076	10,394	19.33	28.40	366	7,700	10,741	21.04	29.35	732	14,776	21,135	20.19	28.87

SOUTHERN RAILWAY COMPANY

Operating Results of Passenger Trains Nos. 13 and 16

Greensboro, N. C. to Goldsboro, N. C.

Year 1959

	Train No. 13	Train No. 16	Total
Revenues:			
Passenger	\$ 9,383	\$10,456	\$ 19,839
Express	15,832	16,043	31,875
Miscellaneous	-	356	356
Total Revenues	\$25,215	\$26,855	\$ 52,070
Direct Expenses:			
Wages, Train and Engine Crews	\$47,290	\$42,968	\$ 90,258
Payroll Tax, R.R. Retirement & Unemp. Ins.	2,507	2,507	5,014
Train Fuel	6,168	6,168	12,336
Pullman Co. Net Loss	3,343	3,343	6,686
Engine House Expenses	984	984	1,968
Passenger Locomotive Lubricants	927	927	1,854
" " Other Supplies	192	192	384
" " Repairs	10,344	10,344	20,688
" Train Cars-CHLW & Icing	3,784	3,817	7,601
" " " -Lubricants	207	210	417
" " " -Other Expenses	442	449	891
" " " -Repairs	7,820	7,961	15,781
" " " -Air Conditioning	2,123	2,128	4,251
Goldsboro Union Station	3,175	3,175	6,350
Rental of Equipment	196	232	428
Total Direct Expenses	\$89,502	\$85,405	\$174,907
Direct Expenses in Excess of Revenues	\$64,287	\$58,550	\$122,837
Ratio - Total Direct Expenses to Total Revenues			336
i.e. \$3.36 was expended to earn a revenue dollar.			

Items of Expense Not Included:

Maintenance of Way-Tracks and Structures
 " " " -Supervision-Depreciation-Retirements
 Maintenance of Equipment-Supervision-Depreciation-Retirements
 All Traffic Expenses
 Transportation-Supervision-Train Dispatching and numerous
 Overhead Accounts
 All General Expenses
 All Taxes - except Payroll
 All Fixed Charges, i.e., Bond Interest, etc.

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EXHIBIT 27 TO PETITION

EXHIBIT 28 TO PETITION

INDEX OF SCHEDULES

Schedule No.	1	-	Sheet 1 of 3	-	Operating Results of Passenger Trains 13 and 16	Between Greensboro and Goldsboro, N.C.
"	"	1	-	"	2 of 3	" " " " Train 13 " Goldsboro and Greensboro, N.C.
"	"	1	-	"	3 of 3	" " " " Train 16 " Greensboro and Goldsboro, N.C.
"	"	2	-	Passenger Revenue	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	3	-	Express Revenue	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	4	-	Sheet 1 of 4	-	Crew Wages, Train 13 Goldsboro - Greensboro, N.C.
"	"	4	-	"	2 of 4	" " " " 16 Greensboro - Goldsboro, N.C.
"	"	4	-	"	3 of 4	Analysis of Crew Wages, Train 13 - Goldsboro - Greensboro, N.C.
"	"	4	-	"	4 of 4	" " " " 16 - Greensboro - Goldsboro, N.C.
"	"	5	-	Locomotive Fuel Expenses	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	6	-	Passenger Locomotive Expenses	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	7	-	Passenger Train Supplies and Expenses	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	8	-	Passenger Train Car Repair Expenses	-	Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	9	-	Passenger Train Supplies and Expenses	-	Air Conditioning Trains 13 and 16 - Greensboro - Goldsboro, N.C.
"	"	10	-	Joint Facility Station Expenses	-	Trains 13 and 16 - Goldsboro Union Station Company

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Schedule 1
Sheet 1 of 3 Sheets

SOUTHERN RAILWAY COMPANY

Operating Results of Passenger Trains 13 and 16 between Greensboro, N. C. and Goldsboro, N. C.

Year 1960

		January 1960	February 1960	March 1960	April 1960	May 1960	June 1960	July 1960	August 1960	September 1960	October 1960	November 1960	December 1960	Year 1960
Revenue:														
106	Passenger	\$ 1,820	\$ 2,497	\$ 2,228	\$ 1,919	\$ 1,833	\$ 2,013	\$ 1,542	\$ 1,607	\$ 1,036	\$ 1,436	\$ 1,501	\$ 1,703	\$ 21,135
107	Express	1,606	2,140	3,063	4,826	2,142	2,267	956	2,558	2,383	3,859	2,340	3,490	31,630
108	Miscellaneous	28	28	28	28	28	28	28	28	28	28	28	28	336
	Total Revenue	\$ 3,454	\$ 4,665	\$ 5,319	\$ 6,773	\$ 4,003	\$ 4,308	\$ 2,526	\$ 4,193	\$ 3,447	\$ 5,323	\$ 3,869	\$ 5,221	\$ 53,101
Direct Expenses:														
109-401	Wages, Train and Engine Crews	\$ 7,736	\$ 7,268	\$ 7,736	\$ 7,502	\$ 7,770	\$ 7,052	\$ 7,433	\$ 7,433	\$ 7,193	\$ 7,433	\$ 7,193	\$ 7,433	\$ 89,182
132	Payroll Tax	462	462	462	462	462	420	420	420	420	420	420	420	5,250
394	Train Fuel	966	886	1,012	894	932	910	934	954	916	946	926	968	11,244
420	Injuries to Persons	-	-	500	-	-	-	-	-	-	-	-	-	500
417	Damage to Live Stock on R/W	-	-	-	-	50	-	-	-	-	-	-	-	50
423	Pullman Co. Net Loss	86	80	46	200	224	278	700	620	1,074	334	348	236	4,226
423	Engine House Expenses	166	134	136	132	138	122	156	130	116	122	114	124	1,590
398	Passenger Locomotive Lubricants ..	202	132	152	142	138	182	130	166	132	158	160	122	1,816
399	Other Suppl. ..	18	32	30	54	34	36	30	26	38	32	32	30	372
411	Repairs	1,982	2,016	2,064	1,906	1,838	1,814	1,772	1,766	1,706	1,656	1,538	1,528	21,586
422	Train Cars-CHW & Icing ..	642	657	696	624	582	598	564	554	536	529	655	527	7,164
422	-Lubricants ..	40	39	34	26	40	40	34	42	40	38	43	31	447
417	-Other Exps.	84	72	95	70	70	85	58	88	68	83	75	94	942
417	Repairs	1,072	1,285	1,376	1,703	1,395	1,157	1,061	744	997	1,825	1,024	653	13,692
422	-Air Cond.	400	455	401	400	504	350	322	452	528	542	404	302	5,060
423	Goldsboro Union Station	586	584	600	552	490	588	692	538	592	568	562	588	6,940
423	Rental of Equipment	100	21	8	34	54	9	6	70	70	139	2	168	681
	Total Direct Expenses	\$14,542	\$14,123	\$15,348	\$14,681	\$14,721	\$13,641	\$14,312	\$14,003	\$14,426	\$14,225	\$13,496	\$13,224	\$170,742
	Direct Expenses in Excess of Revenues	\$11,088	\$ 9,458	\$10,029	\$ 7,908	\$10,718	\$ 9,333	\$11,786	\$ 9,810	\$10,979	\$ 8,902	\$ 9,627	\$ 8,003	\$117,641
	Car Miles Operated	27,719	27,802	28,646	26,974	28,172	27,556	27,652	30,035	27,251	27,282	29,427	26,953	335,469
	Train Miles Operated	7,998	7,482	7,998	7,740	7,998	7,740	7,998	7,998	7,740	7,998	7,740	7,998	94,388
	Revenue Per Train Mile (Cents)	43.186	62.350	66.504	87.506	50.050	55.659	31.583	52.426	44.535	66.554	49.987	65.607	56.258
	Direct Expenses Per Train Mile (Cents)	181.820	188.760	191.898	189.677	184.958	176.240	178.945	175.081	186.382	177.857	174.367	166.172	180.894
	Direct Expenses in Excess of Revenue Per Train Mile (Cents)	138.634	126.410	125.394	102.171	134.008	120.581	147.362	122.655	141.847	111.303	124.380	100.565	124.636

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[fol. 123]

Schedule 1
Sheet 2 of 3 SheetsSOUTHERN RAILWAY COMPANYOperating Results of Passenger Train 13 Between Goldsboro, N. C. and Greensboro, N. C.Year 1960

	January 1960	February 1960	March 1960	April 1960	May 1960	June 1960	July 1960	August 1960	September 1960	October 1960	November 1960	December 1960	Year 1960
Revenues:													
102 Passenger.....(Sch. 2)	\$ 935	\$1,218	\$1,071	\$ 942	\$ 779	\$1,085	\$ 832	\$ 774	\$ 464	\$ 713	\$ 744	\$ 837	\$10,394
107 Express.....(Sch. 3)	803	1,070	1,508	2,392	1,064	1,107	474	1,271	1,184	1,913	1,162	1,734	15,682
Total Revenues.....	\$1,738	\$2,288	\$2,579	\$3,334	\$1,843	\$2,192	\$1,306	\$2,045	\$1,648	\$2,626	\$1,906	\$2,571	\$26,076
Direct Expenses:													
392-401 Wages, Train and Engine Crews.....(Sch. 4)	\$4,055	\$3,809	\$4,055	\$3,932	\$4,073	\$3,708	\$3,908	\$3,908	\$3,782	\$3,908	\$3,782	\$3,908	\$46,826
532 Payroll Tax.....(Sch. 4)	231	231	231	231	231	210	210	210	210	210	210	210	2,625
394 Train Fuel.....(Sch. 5)	483	443	506	447	466	455	467	477	458	473	463	484	5,622
417 Damage to Live Stock on R/W.....	-	-	-	-	50	-	-	-	-	-	-	-	50
403 Pullman Co. Net Loss.....	43	40	23	100	112	139	350	310	537	167	174	118	2,113
400 Engine House Expenses.....(Sch. 6)	83	67	68	66	69	61	78	65	58	61	57	62	795
398 Passenger Locomotive Lubricants.....(Sch. 6)	101	66	76	71	69	91	65	83	66	79	80	61	908
399 " " Other Suppl.....(Sch. 6)	9	16	15	17	17	18	15	13	19	16	16	15	186
311 " " Repairs.....(Sch. 6)	991	1,008	1,032	953	919	907	886	883	853	828	769	764	10,793
402 " Train Cars-CHW & Icing.....(Sch. 7)	323	319	343	312	291	297	282	263	268	261	303	269	3,527
402 " " -Lubricants.....(Sch. 7)	20	19	17	13	20	20	17	20	20	19	20	16	221
402 " " -Other Exps.....(Sch. 7)	42	35	47	35	35	42	29	42	34	41	35	47	464
317 " " -Repairs.....(Sch. 8)	540	627	676	853	699	579	534	372	499	616	468	329	6,790
402 " " -Air Cond.....(Sch. 9)	200	221	197	200	252	175	161	226	264	271	202	151	2,520
Goldsboro Union Station.....(Sch. 10)	293	292	300	276	245	294	346	269	296	284	281	294	3,470
Rental of Equipment.....	50	-	1	17	27	-	-	35	35	70	1	84	320
Total Direct Expenses.....	\$7,464	\$7,193	\$7,587	\$7,523	\$7,575	\$6,996	\$7,348	\$7,176	\$7,399	\$7,304	\$6,859	\$6,808	\$87,232
Direct Expenses in Excess of Revenues.....	\$5,726	\$4,905	\$5,008	\$4,189	\$5,732	\$4,804	\$6,042	\$5,131	\$5,751	\$4,678	\$4,953	\$4,237	\$61,156
Car Miles Operated.....	13,935	13,500	14,128	13,506	14,107	13,670	13,826	14,258	13,636	13,456	13,615	13,552	165,189
Train Miles Operated.....	3,999	3,741	3,999	3,870	3,999	3,870	3,999	3,999	3,870	3,999	3,870	3,979	47,194
Revenue Per Train Mile (Cents).....	43.461	61.160	64.491	86.150	46.087	56.641	32.658	51.138	42.584	65.666	49.251	64.614	55.253
Direct Expenses Per Train Mile (Cents).....	186.647	192.275	189.722	194.393	189.422	180.775	183.746	179.445	191.189	182.645	177.235	171.098	184.837
Direct Expenses in Excess of Revenue Per Train Mile (Cents).....	143.186	131.115	125.231	108.243	143.335	124.134	151.088	128.307	148.605	116.979	127.984	106.484	129.584

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[fol. 124]

Schedule 1
Sheet 3 of 3 Sheets

SOUTHERN RAILWAY COMPANY

Operating Results of Passenger Train 16 Between Greensboro, N. C. and Goldsboro, N. C.

Year 1960

		January 1960	February 1960	March 1960	April 1960	May 1960	June 1960	July 1960	August 1960	September 1960	October 1960	November 1960	December 1960	Year 1960
Revenues:														
102	Passenger	\$ 885	\$ 1,279	\$ 1,157	\$ 977	\$ 1,054	\$ 928	\$ 710	\$ 833	\$ 572	\$ 723	\$ 757	\$ 866	\$10,741
107	Express	803	1,070	1,555	2,434	1,078	1,160	482	1,287	1,199	1,946	1,178	1,756	15,948
108	Miscellaneous	28	28	28	28	28	28	28	28	28	28	28	28	336
	Total Revenues	\$ 1,716	\$ 2,377	\$ 2,740	\$ 3,439	\$ 2,160	\$ 2,116	\$ 1,220	\$ 2,148	\$ 1,799	\$ 2,697	\$ 1,963	\$ 2,650	\$27,025
Direct Expenses:														
302-401	Wages, Train and Engine Crews	\$ 3,681	\$ 3,459	\$ 3,681	\$ 3,570	\$ 3,697	\$ 3,344	\$ 3,525	\$ 3,525	\$ 3,411	\$ 3,525	\$ 3,411	\$ 3,525	\$42,354
532	Payroll Tax	231	231	231	231	231	210	210	210	210	210	210	210	2,525
394	Train Fuel	483	443	506	447	466	455	467	477	458	473	463	484	5,522
420	Injuries to Persons	-	-	500	-	-	-	-	-	-	-	-	-	500
403	Pullman Co. Net Loss	43	40	23	100	112	139	350	310	537	167	174	118	2,113
400	Engine House Expenses	83	67	68	66	69	61	78	65	58	61	57	62	795
398	Passenger Locomotive Lubricants	101	66	76	71	69	91	65	83	66	79	80	61	908
399	" " Other Suppl.	9	16	15	17	17	18	15	13	19	16	16	15	186
311	" " Repairs	991	1,008	1,032	953	919	907	886	883	853	828	769	764	10,793
402	" Train Cars-CHW & Icing	319	338	353	312	291	301	282	291	268	268	352	262	3,637
402	" " -Lubricants	20	20	17	13	20	20	17	22	20	19	23	15	226
402	" " -Other Exps	42	37	48	35	35	43	29	46	34	42	40	47	478
317	" " -Repairs	532	658	700	850	696	578	527	372	498	609	558	324	6,902
402	" " -Air Cond	200	234	204	200	252	175	161	226	264	271	202	151	2,540
	Goldsboro Union Station	293	292	300	276	245	294	346	269	296	284	281	294	3,470
	Rental of Equipment	50	21	7	17	27	9	6	35	35	69	1	84	361
	Total Direct Expenses	\$ 7,078	\$ 6,930	\$ 7,761	\$ 7,158	\$ 7,146	\$ 6,645	\$ 6,964	\$ 6,827	\$ 7,027	\$ 6,921	\$ 6,637	\$ 6,416	\$83,510
	Direct Expenses in Excess of Revenues	\$ 5,362	\$ 4,553	\$ 5,021	\$ 3,719	\$ 4,986	\$ 4,529	\$ 5,744	\$ 4,679	\$ 5,228	\$ 4,224	\$ 4,674	\$ 3,766	\$56,485
	Car Miles Operated	13,784	14,302	14,518	13,468	14,065	13,886	13,826	15,777	13,615	13,826	15,812	13,401	170,280
	Train Miles Operated	3,999	3,741	3,999	3,870	3,999	3,870	3,999	3,999	3,870	3,999	3,870	3,979	47,194
	Revenue Per Train Mile (Cents)	42.911	63.539	68.517	88.863	54.014	54.677	30.508	53.713	46.486	67.442	50.724	66.600	57.264
	Direct Expenses Per Train Mile (Cents)	176.994	185.245	194.073	184.961	178.695	171.705	174.144	170.717	181.576	173.068	171.499	161.247	176.950
	Direct Expenses in Excess of Revenue Per Train Mile (Cents)	134.083	121.706	125.556	96.098	124.681	117.028	143.636	117.004	135.090	105.626	120.775	94.647	119.686

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Schedule 2

SOUTHERN RAILWAY COMPANYPassenger Revenue I.C.C. Acct. 102Trains 13 and 16 Operating Between Greensboro, N. C., and Goldsboro, N. C.

<u>Train 13 or 16</u> <u>Miles</u> <u>Operated</u>			<u>Passenger Revenue - (A/C 102)</u> <u>Train No. 13</u>		<u>Passenger Revenue - (A/C 102)</u> <u>Train No. 16</u>	
			<u>Total</u>	<u>Per Train</u> <u>Mile</u> <u>(Cents)</u>	<u>Total</u>	<u>Per Train</u> <u>Mile</u> <u>(Cents)</u>
January	1960	3,999	\$ 935	23.381	\$ 885	22.131
February	"	3,741	1,218	32.558	1,279	34.189
March	"	3,999	1,071	26.782	1,157	28.932
April	"	3,870	942	24.341	977	25.245
May	"	3,999	779	19.480	1,054	26.357
June	"	3,870	1,085	28.036	928	23.979
July	"	3,999	832	20.805	710	17.754
August	"	3,999	774	19.355	833	20.830
September	"	3,870	464	11.990	572	14.780
October	"	3,999	713	17.829	723	18.080
November	"	3,870	744	19.225	757	19.561
December	"	3,979	837	21.035	866	21.764
Total		47,194	\$10,394	22.024	\$10,741	22.759

[fol. 126]

Schedule 3

SOUTHERN RAILWAY COMPANYExpress RevenueTrains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.

	Tr. 13 or 16 Miles Operated	Southern Railway Company			Train No. 13			Train No. 16		
		Express Revenue	Car Foot Miles	Avg. Rev. per Car Ft. Mile (Cents)	Car Foot Miles	Express Revenue	Exp. Rev. per Train Mile (Cents)	Car Foot Miles	Express Revenue	Exp. Rev. per Train Mile (Cents)
January 1960	3,999	\$ 179,389	42,109,695	.4260	188,531	\$ 803	20.080	188,531	\$ 803	20.080
February "	3,741	227,999	39,860,465	.5720	187,019	1,070	28.602	187,019	1,070	28.602
March "	3,999	322,302	43,662,286	.7382	204,254	1,508	37.709	210,715	1,555	38.885
April "	3,870	534,517	41,399,498	1.2911	185,300	2,392	61.809	188,531	2,434	62.894
May "	3,999	230,865	41,902,863	.5510	193,052	1,064	26.607	195,636	1,078	26.957
June "	3,870	233,885	40,800,200	.5732	193,052	1,107	28.605	202,450	1,160	29.974
July "	3,999	102,949	40,225,522	.2559	185,300	474	11.853	188,531	482	12.053
August "	3,999	263,124	41,763,703	.6300	201,670	1,271	31.783	204,254	1,287	32.183
September "	3,870	238,693	38,930,262	.6131	193,052	1,184	30.594	195,636	1,199	30.982
October "	3,999	407,260	39,448,530	1.0324	185,300	1,913	47.837	188,531	1,946	48.662
November "	3,870	233,361	38,761,225	.6020	193,052	1,162	30.026	195,636	1,178	30.439
December "	3,979	357,985	40,026,053	.8944	193,917	1,734	43.579	196,283	1,756	44.132
Total	47,194	\$3,332,329	488,890,302	.6816	2,303,499	\$15,682	33.229	2,341,753	\$15,948	33.792

[fol. 127]

Schedule 4
Sheet 1 of 4SOUTHERN RAILWAY COMPANYCrew-Wage ExpensesTrain No. 13 - Goldsboro, N. C. to Greensboro, N. C.

	<u>Train Miles</u>	<u>Engineer</u>	<u>Fireman</u>	<u>Conductor</u>	<u>Flagman</u>	<u>Baggage- master</u>	<u>Total Crew Wages</u>	<u>Payroll Taxes</u>	<u>Vacation Allowance 4%</u>	<u>Total Crew Wage Expense</u>	<u>Crew Wage Exp. per Train Mile (Cents)</u>
January 1960	3,999						\$ 3,899	\$ 231	\$ 156	\$ 4,286	107.177
February	3,741						3,663	231	146	4,040	107.993
March	3,999						3,899	231	156	4,286	107.177
April	3,870						3,781	231	151	4,163	107.571
May	3,999						3,916	231	157	4,304	107.627
June	3,870						3,565	210	143	3,918	101.240
July	3,999						3,758	210	150	4,118	102.976
August	3,999						3,758	210	150	4,118	102.976
September	3,870						3,637	210	145	3,992	103.152
October	3,999						3,758	210	150	4,118	102.976
November	3,870						3,637	210	145	3,992	103.152
December	3,979	\$892	\$791	\$748	\$661	\$666	3,758	210	150	4,118	103.493
Total	47,194						\$45,029	\$2,625	\$1,799	\$49,453	104.787

Services of Train Porter Discontinued June 1, 1960.

[fol. 128]

Schedule 4
Sheet 2 of 4SOUTHERN RAILWAY COMPANYCrew Wage ExpensesTrain No. 16 - Greensboro, N. C. to Goldsboro, N. C.

		<u>Train Miles</u>	<u>Engineer</u>	<u>Fireman</u>	<u>Conductor</u>	<u>Flagman</u>	<u>Baggage- master</u>	<u>Total Crew Wages</u>	<u>Payroll Taxes</u>	<u>Vacation Allowance 4%</u>	<u>Total Crew Wage Expense</u>	<u>Crew Wage Exp. per Train Mile (Cents)</u>
January	1960	3,999						\$ 3,540	\$ 231	\$ 141	\$ 3,912	97.824
February	"	3,741						3,326	231	133	3,690	98.637
March	"	3,999						3,540	231	141	3,912	97.824
April	"	3,870						3,433	231	137	3,801	98.217
May	"	3,999						3,555	231	142	3,928	98.225
June	"	3,870						3,215	210	129	3,554	91.835
July	"	3,999						3,389	210	136	3,735	93.398
August	"	3,999						3,389	210	136	3,735	93.398
September	"	3,870						3,280	210	131	3,621	93.566
October	"	3,999						3,389	210	136	3,735	93.398
November	"	3,870						3,280	210	131	3,621	93.566
December	"	3,979	\$814	\$721	\$668	\$590	\$596	3,389	210	136	3,735	93.868
Total		47,194						\$40,725	\$2,625	\$1,629	\$44,979	95.307

Services of Train Porter Discontinued June 1, 1960

[fol. 129]

SOUTHERN RAILWAY COMPANYSchedule 4
Sheet 3 of 4Crew Wage Expenses Per Trip, Per Month and Twelve Months Period
Train 13 Operating Between Goldsboro, N.C. and Greensboro, N.C.

	Current Rate Per Mile Dec. 1960	Miles Per Trip	Wages for the Trip	Payroll Taxes (10.50%)	Vacation Allowance (4%) ↑	Train 13 Total Wage Expense		
						Per Trip	Per Month Dec. 1960	Year 1960
Engineer.	20.20¢	130	\$ 28.79*	\$ 3.02	\$1.15	\$ 32.96	\$ 970.19	\$11,462.62
Fireman	17.90¢	130	25.51*	2.68	1.02	29.21	864.44	10,214.13
Conductor	13.76¢	150	24.12**	2.53	.96	27.61	819.63	9,685.04
Flagman	12.09¢	150	21.31**	2.24	.85	24.40	729.03	8,615.44
Baggage-master	12.207¢	150	21.50**	2.26	.86	24.62	735.16	8,687.76
Porter.	May 1960	129	7.48	.79	.30	8.57	262.16	1,287.44 Jan. thru May
Total			\$128.71	\$13.52	\$5.14	\$147.37	\$4,380.61	\$49,952.43

* Includes 1 Hour Overtime.

** Includes \$.90 Daily Guarantee
and 1 Hour Overtime.

[fol.130]

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Schedule 4
Sheet 4 of 4SOUTHERN RAILWAY COMPANYCrew Wage Expenses Per Trip, Per Month, and Twelve Months Period
Train 16 Operating Between Greensboro, N.C. and Goldshoro, N.C.

	Current Rate Per Mile Dec. 1960	Miles per Trip	Wages for the Trip	Payroll Taxes 10.50%	Vacation Allowance 4%	Train 16 Total Wage Expense		
						Per Trip	Per Month Dec. 1960	Year 1960
Engineer	20.20¢	130	\$26.26	\$2.76	\$1.05	\$30.07	\$888.62	\$10,499.61
Fireman	17.90¢	130	23.27	2.44	.93	26.64	792.22	9,361.49
Conductor	13.76¢	150	21.54 *	2.26	.86	24.66	736.45	8,702.99
Flagman	12.09¢	150	19.04 *	2.00	.76	21.80	655.85	7,751.39
Baggage-master	12.20¢	150	19.21 *	2.02	.77	22.00	661.33	7,816.09
Porter	May 1960	129	7.48	.79	.30	8.57	262.16	1,287.44-Jan.thru May
Total			\$116.80	\$12.27	\$4.67	\$133.74	\$3,996.63	\$45,419.01

* Includes \$.90 Daily Guarantee

[fol. 131]

Schedule 5

SOUTHERN RAILWAY COMPANYLocomotive Fuel ExpenseTrains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.

	<u>Trains 13 or 16</u> <u>No. of Trips</u>	<u>Sou. Ry. Co.</u> <u>Avg. Fuel Cost</u> <u>Per Gallon ¢</u>	<u>Train 13 or 16</u> <u>*Gals. of Oil</u> <u>Consumed at 177</u> <u>Gals. Per Trip</u>	<u>Total Cost</u> <u>Train 13</u>	<u>Total Cost</u> <u>Train 16</u>
January 1960	31	8.80	5,487	\$483	\$483
February "	29	8.64	5,133	443	443
March "	31	9.22	5,487	506	506
April "	30	8.41	5,310	447	447
May "	31	8.49	5,487	466	466
June "	30	8.57	5,310	455	455
July "	31	8.51	5,487	467	467
August "	31	8.69	5,487	477	477
September "	30	8.62	5,310	458	458
October "	31	8.62	5,487	473	473
November "	30	8.71	5,310	463	463
December "	31	8.87	5,460	484	484
Total	366		64,755	\$5,622	\$5,622

* Test Study

[fol. 132]

SOUTHERN RAILWAY COMPANY
Diesel Operation
Passenger Locomotive Expenses
Trains 13 and 16 Operating Between Greensboro, N. C., and Goldsboro, N. C.

	Southern Railway Company				Train No. 13					Train No. 16				
	Average Expenses Per Passenger Diesel Locomotive Unit Miles (\$)				Pass. Diesel Loco. Unit Miles	Pass. Engine-house	Diesel Lubr-cants	Locomotive Other Supplies	Expenses Repairs	Pass. Diesel Loco. Unit Miles	Pass. Engine-house	Diesel Lubr-cants	Locomotive Other Supplies	Expenses Repairs
	Engine-house	Lubri-cants	Other Supplies	Repairs										
January 1960	2.080	2.522	.234	24.773	3,999	\$ 83	\$101	\$ 9	\$ 991	3,999	\$ 83	\$101	\$ 9	\$ 991
February "	1.793	1.766	.426	26.945	3,741	67	66	16	1,008	3,741	67	66	16	1,008
March "	1.688	1.909	.376	25.800	3,999	68	76	15	1,032	3,999	68	76	15	1,032
April "	1.713	1.840	.451	24.619	3,870	66	71	17	953	3,870	66	71	17	953
May "	1.718	1.722	.434	22.980	3,999	69	69	17	919	3,999	69	69	17	919
June "	1.565	2.348	.461	23.426	3,870	61	91	18	907	3,870	61	91	18	907
July "	1.954	1.623	.384	22.159	3,999	78	65	15	886	3,999	78	65	15	886
August "	1.614	2.070	.336	22.087	3,999	65	83	13	883	3,999	65	83	13	883
September "	1.490	1.702	.493	22.040	3,870	58	66	19	853	3,870	58	66	19	853
October "	1.534	1.973	.402	20.700	3,999	61	79	16	828	3,999	61	79	16	828
November "	1.474	2.062	.405	19.863	3,870	57	80	16	769	3,870	57	80	16	769
December "	1.562	1.544	.376	19.205	3,979	62	61	15	764	3,979	62	61	15	764
Total					47,194	\$795	\$908	\$186	\$10,793	47,194	\$795	\$908	\$186	\$10,793

Method of Computation

Year 1960

	Passenger Diesel Locomotives			
	Enginehouse	Lubricants	Other Supplies	Repairs
Entire Line Expenses	\$ 200,080	\$ 228,642	\$ 47,276	\$ 2,716,178
Total Passenger Diesel Locomotive Unit Miles	11,902,533	11,902,533	11,902,533	11,902,533
Average Expense Per Passenger Diesel Locomotive Unit Mile	1.681¢	1.921¢	0.397¢	22.820¢

[fol. 133]

Schedule 7

SOUTHERN RAILWAY COMPANYPassenger Train Supplies and ExpensesTrains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N.C.

	Trn. 13 or 16 Miles Operated	Southern Railway Co. Average Expense per Passenger Train Car Mile			Train No. 13				Train No. 16			
		CHLW	Lubri	Other	Pass. Car	CHLW	Lubri-	Other	Pass. Car	CHLW	Lubri-	Other
		Icing	cants	Exps.	Miles	Icing	cants	Expenses	Miles	Icing	cants	Expenses
		(Cents)	(Cents)	(Cents)								
January 1960	3,999	2.317	.147	.304	13,935	\$ 323	\$ 20	\$ 42	13,784	\$ 319	\$ 20	\$ 42
February "	3,741	2.364	.141	.258	13,500	319	19	35	14,302	338	20	37
March "	3,999	2.429	.117	.330	14,128	343	17	47	14,518	353	17	48
April "	3,870	2.313	.099	.259	13,506	312	13	35	13,468	312	13	35
May "	3,999	2.066	.144	.247	14,107	291	20	35	14,065	291	20	35
June "	3,870	2.171	.143	.307	13,670	297	20	42	13,886	301	20	43
July "	3,999	2.041	.125	.212	13,826	282	17	29	13,826	282	17	29
August "	3,999	1.847	.142	.294	14,258	263	20	42	15,777	291	22	46
September "	3,870	1.966	.144	.251	13,636	268	20	34	13,615	268	20	34
October "	3,999	1.937	.138	.303	13,456	261	19	41	13,826	268	19	42
November "	3,870	2.226	.145	.255	13,615	303	20	35	15,812	352	23	40
December "	3,979	1.956	.115	.350	13,552	265	16	47	13,401	262	15	47
Total	47,194				165,189	\$3,527	\$221	\$464	170,280	\$3,637	\$226	\$478

Method of ComputationYear 1960

	<u>Passenger Train Cars</u>		
	<u>CHLW & Icing</u>	<u>Lubricants</u>	<u>Other Expenses</u>
Entire Line Expenses	\$ 1,297,652	\$ 81,154	\$ 171,486
Total Passenger Train Car Miles	60,882,395	60,882,395	60,882,395
Average Expense Per Passenger Train Car Mile	2.131¢	0.133¢	0.282¢

[fol. 134]

Schedule 8

SOUTHERN RAILWAY COMPANYPassenger Train Car Repair ExpensesTrains 13 and 16 Operating Between Greensboro, N.C. and Goldsboro, N.C.

	Trn. 13 or 16 Miles Operated	Sou. Rwy. Co. Av. Pass. Train Car Repair Expense Per Car Mile (Cents)	Passenger Car Miles	Train No. 13		Passenger Car Miles	Train No. 16	
				Pass. Train Car Repair Expense Total	Per Train Mile (Cents)		Pass. Train Car Repair Expense Total	Per Train Mile (Cents)
January 1960	3,999	4.834	11,164	\$540	13.503	11,013	\$532	13.303
February "	3,741	5.622	11,151	627	16.760	11,710	658	17.589
March "	3,999	5.833	11,596	676	16.904	12,007	700	17.504
April "	3,870	7.882	10,816	853	22.041	10,778	850	21.964
May "	3,999	6.248	11,185	699	17.479	11,143	696	17.404
June "	3,870	5.177	11,185	579	14.961	11,164	578	14.935
July "	3,999	4.715	11,315	534	13.353	11,185	527	13.178
August "	3,999	3.322	11,185	372	9.302	11,185	372	9.302
September "	3,870	4.671	10,686	499	12.894	10,665	498	12.868
October "	3,999	5.924	10,396	616	15.404	10,287	609	15.229
November "	3,870	4.173	11,164	466	12.041	13,361	558	14.419
December "	3,979	3.266	10,082	329	8.268	9,931	324	8.143
Total	47,194		131,925	\$6,790	14,387	134,429	\$6,902	14.625

Method of ComputationYear 1960

Entire Line Passenger Train Car Repair Expense	\$ 2,485,367
Total Passenger Train Car Repair Miles	48,740,936
Average Expense Per Passenger Train Car Mile	5.099¢

[fol. 135]

Schedule 9

SOUTHERN RAILWAY COMPANYPassenger Train Supplies and ExpensesTrains 13 and 16 Operating Between Greensboro, N.C. and Goldsboro, N.C.

	Train 13 or 16 Miles Operated	Sou. Rwy. Co. Average		Train No. 13		Air Cond. Passenger Car Miles	Train No. 16	
		Pass. Trn. Car	Air Cond. Exp.	Pass. Tr. Car	Air Cond. Exp.		Pass. Tr. Car	Air Cond. Exp.
		Per Car Mile		Per			Per	
		(Cents)		Total	Train Mile (Cents)		Total	Train Mile (Cents)
January 1960	3,999	2.481	8,060	\$200	5.001	8,060	\$200	5.001
February "	3,741	2.818	7,841	221	5.908	8,312	234	6.255
March "	3,999	2.446	8,060	197	4.926	8,320	204	5.101
April "	3,870	2.604	7,670	200	5.168	7,670	200	5.168
May "	3,999	3.074	8,190	252	6.302	8,190	252	6.302
June "	3,870	2.239	7,800	175	4.522	7,800	175	4.522
July "	3,999	2.000	8,060	161	4.026	8,060	161	4.026
August "	3,999	2.849	7,930	226	5.651	7,930	226	5.651
September "	3,870	3.388	7,800	264	6.822	7,800	264	6.822
October "	3,999	3.367	8,060	271	6.777	8,060	271	6.777
November "	3,870	2.592	7,800	202	5.220	7,800	202	5.220
December "	3,979	1.944	7,758	151	3.795	7,758	151	3.795
Total	47,194		95,029	\$2,520	5.340	95,760	\$2,540	5.382

Method of ComputationYear 1960

Entire Line Air Conditioning Passenger Car Expense	\$ 400,099
Total Air Conditioning Passenger Car Miles	15,211,178
Average Expense Per Passenger Train Car Mile	2.630¢

[fol. 136]

Schedule 10

SOUTHERN RAILWAY COMPANYTrains 13 and 16 Operating Between Greensboro, E. C. and Goldsboro, N. C.Goldsboro Union Station

	<u>Total All Cars</u>	<u>Total Sou. Rvy. Co. Cars</u>	<u>Trains 13 & 16 Cars Eliminated</u>	<u>Sou. Rvy. Co. Cars Restated</u>	<u>All Cars Restated</u>	<u>Total Station Cost</u>	<u>Sou. Rvy. Co. Cost Actual</u>	<u>Sou. Rvy. Co. Cost Restated</u>	<u>Savings from Discont. Trains 13 & 16</u>
January 1960	1,156	172	172	-	984	\$ 3,935	\$ 586	-	\$ 586
February	1,089	167	167	-	922	3,808	584	-	584
March	1,167	180	180	-	987	3,888	600	-	600
April	1,141	168	168	-	973	3,746	551	-	551
May	1,196	172	172	-	1,024	3,417	491	-	491
June	1,131	170	170	-	961	3,907	587	-	587
July	1,184	166	166	-	1,018	4,938	692	-	692
August	1,108	180	180	-	928	3,319	539	-	539
September	991	176	176	-	815	3,325	591	-	591
October	1,062	172	172	-	890	3,516	569	-	569
November	1,044	168	168	-	876	3,498	562	-	562
December	1,058	166	166	-	892	3,749	588	-	588
Total	13,327	2,057	2,057	-	11,270	\$45,042	\$6,940	-	\$6,940

SOUTHERN RAILWAY SYSTEM

FEEDER VALUE OF TRAINS 13 AND 16, OPERATING
BETWEEN GREENSBORO, N. C. AND GOLDSBORO, N. C.,
ACCRUING TO THE SOUTHERN RAILWAY SYSTEM

	Year 1959	Year 1960
System Off Line Revenue	\$73,960	\$83,034
Less 50% Operating Costs	<u>\$36,980</u>	<u>41,517</u>
Net Revenue Accruing to Southern Railway System For Off Line Passengers From Trains 13 and 16	\$36,980	\$41,517

[fol. 138]

SOUTHERN RAILWAY COMPANY
GENERAL BALANCE SHEET AS OF DECEMBER 31, 1960

EXHIBIT 30 TO PETITION**ASSETS****CURRENT ASSETS:**

701	Cash	\$ 15,114,385
702	Temporary cash investments	30,065,240
703	Special deposits	3,104,451
704	Loans and Notes receivable	3,237,500
706	Net balances receivable from agents and conductors	4,390,009
707	Miscellaneous accounts receivable	10,493,365
708	Interest and dividends receivable	440,399
709	Accrued accounts receivable	3,140,725
710	Working fund advances	453,718
711	Prepayments	22,468
712	Material and supplies	7,418,823
713	Other current assets	140,587
	Total current assets	\$ 78,021,688

SPECIAL FUNDS:

715	Sinking funds	\$ 2,291
716	Capital and other reserve funds	186,726
717	Insurance and other funds	610,700
	Total special funds	\$ 799,717

INVESTMENTS:

721	Investments in affiliated companies	\$113,180,854
722	Other investments	464,185
	Total investments	\$113,645,039

PROPERTIES:

731	Road and equipment property	\$771,161,596
732	Improvements on leased property	49,612,502
733	Acquisition adjustment	(91,377)
734	Donations and grants	(14,587,739)
	Total transportation property	\$806,094,982
735	Accrued depreciation - Road and Equipment	(136,088,737)
736	Amortization of defense projects - Road and Equipment	(30,675,899)
	Total transportation property less recorded depreciation and amortization	\$639,330,346
737	Miscellaneous physical property	4,557,585
738	Accrued depreciation - Miscellaneous physical property	(33,661)
	Miscellaneous physical property less recorded depreciation	4,523,894
	Total properties less recorded depreciation and amortization	\$643,854,240

OTHER ASSETS AND DEFERRED CHARGES:

741	Other assets	\$ 4,125,945
742	Unamortized discount on long-term debt	704,493
743	Other deferred charges	4,001,669
	Total other assets and deferred charges	\$ 8,832,107

TOTAL ASSETS **\$845,152,771****LIABILITIES AND SHAREHOLDERS' EQUITY****CURRENT LIABILITIES:**

751	Loans and Notes payable	\$ 3,237,500
752	Traffic and car-service balances - Cr.	2,053,954
753	Audited accounts and wages payable	7,162,903
754	Miscellaneous accounts payable	4,658,333
755	Interest matured unpaid	2,555,565
756	Dividends matured unpaid	525,552
757	Unmatured interest accrued	1,266,953
759	Accrued accounts payable	8,419,640
760	Federal income taxes accrued	18,016,502
761	Other taxes accrued	4,405,127
763	Other current liabilities	1,427,302
	Total current liabilities (exclusive of long-term debt due within one year)	\$ 51,729,341

LONG-TERM DEBT DUE WITHIN ONE YEAR:

764	Equipment obligations and other debt	\$ 13,122,592
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LONG-TERM DEBT:

	Total issued	Held by or for Company	
765	Funded debt unmatured	\$181,323,200	\$23,809,200
766	Equipment obligations	64,640,658	-0-
769	Accounts payable to affiliated companies		728,962
	Total long-term debt	\$222,873,680	

RESERVES:

774	Casualty and other reserves	\$ 6,114,700
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OTHER LIABILITIES AND DEFERRED CREDITS:

782	Other liabilities	\$ 3,627,067
784	Other deferred credits	2,574,668
785	Accrued depreciation - Leased property	7,051,780
	Total other liabilities and deferred credits	\$ 13,253,515

SHAREHOLDERS' EQUITY:

	Total issued	Held by or for Company	
791	Capital stock (Par or stated value):		
	Capital stock issued	\$190,362,300	\$1,916,000
	Capital surplus:		
795	Paid-in surplus		\$ 319,412
796	Other capital surplus		288,927
	Total capital surplus	0	\$ 608,339
	Retained income:		
797	Retained income - Appropriated		\$ 3,410,286
798	Retained income - Unappropriated		341,598,070
	Total retained income	0	\$347,008,356
	Total shareholders' equity	0	\$350,058,991

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY **\$845,152,771**

EXHIBIT 31 TO PETITION

Northern Railway Company-Year 1929

NO. THREE ACCOUNT FOR THE YEAR

1. Give the Finance Account of the respondent for the year in accordance with the rules prescribed in the Voluntary System of Accounts by National Companies.
2. In addition to those required the respondent must also submit the account of Finance that is asked by debenture or other financial instruments outstanding or for which interest is payable the question of which is necessary for the operating report. The account should be submitted in the form of a statement in the above specified appropriate accounts. For example, and in the appropriate form (2) under Item 1.

[illegible]

Southern Railway Company-Year 1959

MR. BROOKS ACCOUNT FOR THE YEAR—C—~~C~~

5. Returns for the year reported on Item 1 to 30, inclusive, should be submitted to Bureau 60 in 60-day increments with the Commissioner's Sales Committee the Reporting of Selling Offices.

4. Any covered currency involving subcommittees included in column (2) on lines 1 to 12, inclusive, should be fully explained in a footnote.

Line		Amount in current year			Amount in preceding year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year		
No.		1940			1939			1940			1939			1940			1939			1940			1939		
I. Operating Income																									
A. RAILWAY OPERATING INCOME																									
(301)	Railway operating revenues (p. 300)	275,000	260,000	250,000	275,000	260,000	250,000	275,000	260,000	250,000	275,000	260,000	250,000	275,000	260,000	250,000	275,000	260,000	250,000	275,000	260,000	250,000			
(302)	Railway operating expenses (p. 300)	180,000	170,000	160,000	180,000	170,000	160,000	180,000	170,000	160,000	180,000	170,000	160,000	180,000	170,000	160,000	180,000	170,000	160,000	180,000	170,000	160,000			
	Net revenue from railway operations	95,000	90,000	90,000	95,000	90,000	90,000	95,000	90,000	90,000	95,000	90,000	90,000	95,000	90,000	90,000	95,000	90,000	90,000	95,000	90,000	90,000			
(303)	Railway tax credits (p. 317)	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000			
	Railway operating income	105,000	100,000	100,000	105,000	100,000	100,000	105,000	100,000	100,000	105,000	100,000	100,000	105,000	100,000	100,000	105,000	100,000	100,000	105,000	100,000	100,000			
B. RENT INCOME																									
(304)	Rent of freight cars—Credit balance (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(305)	Rent from locomotives (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(306)	Rent for passenger-train cars (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(307)	Rent from freight equipment	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000			
(308)	Rent from work equipment	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000			
(309)	Joint facility and income	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000			
	Total rent income	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000			
C. RENTALS FROM OTHER SOURCES																									
(310)	Rent of freight cars—Debit balance (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(311)	Rent for locomotives (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(312)	Rent for passenger-train cars (p. 318)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(313)	Rent for freight equipment	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000			
(314)	Rent for work equipment	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000			
(315)	Joint facility and income	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000			
	Total rental income	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000			
	Net rental income (Line 315, 316)	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000			
	Net railway operating income (Line 315, 316)	115,000	110,000	110,000	115,000	110,000	110,000	115,000	110,000	110,000	115,000	110,000	110,000	115,000	110,000	110,000	115,000	110,000	110,000	115,000	110,000	110,000			
II. Other Income																									
(316)	Income from miscellaneous operations (p. 321)	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
(317)	Income from lease of road and equipment (p. 312)	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
(318)	Miscellaneous debt income (p. 319)	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000			
(319)	Income from miscellaneous property (p. 321)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)			
(320)	Separately operated properties—Profit (p. 319)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(321)	Dividend income	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(322)	Interest income	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(323)	Income from sinking and other reserve funds	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000			
(324)	Refund of premiums on funded debt	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000			
(325)	Contributions from other companies	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(326)	Miscellaneous income	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
	Total other income	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000			
	Total income (Line 326, 327)	175,000	170,000	170,000	175,000	170,000	170,000	175,000	170,000	170,000	175,000	170,000	170,000	175,000	170,000	170,000	175,000	170,000	170,000	175,000	170,000	170,000			
III. Miscellaneous Income																									
(327)	Repayment of miscellaneous operations (p. 321)	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
(328)	Income on miscellaneous operating property (p. 321)	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000			
(329)	Miscellaneous debt (p. 322)	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000			
(330)	Miscellaneous tax credits (p. 323)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(331)	Separately operated properties—Loss (p. 319)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(332)	Maintenance of investment operations	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(333)	Income transferred to other companies	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(334)	Miscellaneous income charges	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
	Total miscellaneous deductions	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
	Income available for bond charges (Line 334, 335)	173,000	168,000	168,000	173,000	168,000	168,000	173,000	168,000	168,000	173,000	168,000	168,000	173,000	168,000	168,000	173,000	168,000	168,000	173,000	168,000	168,000			

Line		Amount in current year			Amount in preceding year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year			Amount in preceding year and current year					
No.		1940			1939			1940			1939			1940			1939			1940			1939		
IV. From Channels																									
(335)	Rent for leased roads and equipment (p. 321)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(336)	Interest on funded debt:																								
	(a) Fixed interest not in default	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000			
	(b) Interest in default	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000			
(337)	Interest on unfunded debt	11,000	11,00																						

[fol. 141]

SUPREME COURT OF NORTH CAROLINA

No. 457

TENTH DISTRICT

Fall Term, 1960

From Wake

STATE OF NORTH CAROLINA, ex rel. UTILITIES COMMISSION;
 and STATE OF NORTH CAROLINA, CITY OF DURHAM, a
 municipal corporation, DUKE UNIVERSITY, ERWIN MILLS,
 Incorporated, COUNTY OF DURHAM, LIGGETT & MYERS
 TOBACCO COMPANY, MRS. MARY TRENT SEMANS, THE DUR-
 HAM CHAMBER OF COMMERCE, THE AMERICAN TOBACCO
 COMPANY, RESEARCH TRIANGLE INSTITUTE, THE DURHAM
 MERCHANTS ASSOCIATION, Intervenors,

—v.—

SOUTHERN RAILWAY COMPANY.

[fol. 142]

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Transcript of Hearing

COL. GEORGE F. LEIST testified as follows:

Direct examination.

By Mr. Bryant:

I am Col. George F. Leist, Commanding Officer at the
 Office of Ordnance Research, U. S. Army, Duke University,
 Durham. I have been stationed in Durham three years and
 two months. I have been commanding officer during the
 entire period that I have been stationed in Durham.

Our office is responsible for the prosecution of basic re-
 search on a national level primarily in university and

non-profit institutions throughout the country and rendering the necessary scientific service to the Army Ordnance installations. In other words, it is our national headquarters for this kind of endeavor. The nature of this work is to receive proposals for researches in physics, chemistry, mathematics, metallurgy and engineering sciences and in proving and evaluating these proposals and in supporting [fol. 143] this work at the level of funding that is given us throughout the country; also in rendering scientific services of such nature as to enhance the scientific capability of the Army Missile Command at Huntsville and the various missile proving grounds that are under the jurisdiction of the Army.

Since the office to which we report is in Washington, the Pentagon, and since we are asked to attend frequent conferences in Washington and points North, such as Philadelphia, it is necessary that we have various modes of travel and also alternative modes of travel. In using the term "we," I refer to myself as an individual, in which capacity I am testifying today, and my associates with whom I have worked in the last three years. There are 65 associates in my immediate office in which I work, and there are approximately 15 associates at Duke University who travel on occasion in our behalf. I am in such position that this information and statistics I give is known to me as an individual; and in that regard, during the fiscal year 1959, my associates and I made 143 one-way trips, or the equivalent of one-way trips, between Durham and the North, using Trains Nos. 13 and 16, at a total fare of \$2,603. This represents exactly one third of the staff travel. The total staff travel to Washington and these points North. The office also generated mostly through the Durham ticket office \$1,740 worth of rail travel on other railway trains; and during this 12-month period the employees of Duke University whom I mentioned formerly who are associated with us, did \$549 worth of travel; that is rail travel. We also travel by air, and sometimes we travel by automobile, but we travel the way that it will get us to the place that we need to go at the proper time. The office generated through its conferences in Durham an additional amount of travel equal to its own staff travel. Now, these would be people

who must come to see us and who confer with us in the responsibilities which I previously mentioned. The total [fol. 144] then would figure to about \$6,000 worth of rail travel on Trains 13 and 16. We use air, rail and private automobiles.

There are many times when we must be in Washington before ten o'clock in the morning; and most of these conferences are generated at about 8:30 and in order to get there on the morning without loss of time or convenience, we have taken the Southern Railway train which leaves Durham at 6:55 P.M., and we are able to disembark at about 7:30 to 8 o'clock in the morning, depending on exact time of arrival. Therefore, having an opportunity to meet our engagements in the early part of the morning, as well as to conduct the full day's business and then return by Southern Railway at about 11:10 at night and return here by 8 o'clock in the morning at Durham where we lose no time to conduct our business during the day there. The only way we could use the plane to get to conference by 8:30 A.M. at the Pentagon in Washington would be to go up the night before and seek a hotel room or engage in additional correspondence. We have found it to be much more convenient and to meet our necessity to travel in the manner which I have previously described.

Getting off the train about 7:30 in the morning depends on which car we are able to get out of Greensboro. There are two ways of doing that. Old Car No. 9 leaves on Clover Plot, or Clover Leave—I guess the names are "Clover's" preceding the other names—leaves ordinarily at such a time that we are able to get to Washington at about 7:30 in the morning. That is by taking the train at 6:55 out of Durham and changing in Greensboro. Now, if we do not change from the Durham car in Greensboro, we get to Washington about 4:35 in the morning.

There was one attempt made by us in the past two weeks to get air transportation to Washington during the course of typhoon Gracie, the hurricane Gracie, and it was very doubtful whether me or my chief scientist or one other [fol. 145] person could get out by air, so the other two left at one o'clock in the afternoon by automobile and got there on time. I at that time came over and waited for the

Seaboard train which came up and was able to get me there in time in the morning. The planes to my knowledge at that time were not able to get us to the place where we were supposed to go in time.

If the rail service were discontinued, then we at the U. S. Army Office of Ordnance Research at Duke would have the one source by air, and in the final analysis we would have to resort to the automobile, if the air travel was not possible at the time our trip was scheduled. This would also affect us in that we would not be able to get people in to us as readily as we have been in the past, as conveniently or when necessary; and that we would then have to depend mostly on air.

There is one aspect of the work that as far as I am personally concerned would suffer and that would be on a very high-priority project, which is an extremely important one for the Country, the Nike-Zeus Anti-Missile Missile Program, and if we were not able to get to these places when the meetings are scheduled, this would have a deleterious effect upon our efforts as well as the combined efforts of those who are expecting us to be there on time. If for any reason I could not meet a plane schedule or if the planes were on strike or grounded on account of weather, there would be no other satisfactory alternate mode of transportation except to resort to one's own personal automobile, and if one has to meet a deadline, in various parts of the country, this would be a great inconvenience as well as not insuring the person getting there on time. I would like to consider that everything I have said today is considered to be for the convenience as well as the necessity of my work.

Cross examination.

By Col. Joyner:

My headquarters are located within the geographic confines of the Duke University plant and I have a good deal of travel to Washington, between my headquarters at Duke University and the Pentagon and other installations at Washington, and North, — Philadelphia, and in the vicinity of New York. One third of that travel has

been on the Southern Railway passenger train. Most of the rest has been by air and by automobile. I would say that the normal individual with whom I am associated would probably travel by air unless it is desirable to be in Washington for a conference about 8:30 in the morning. In the last three months I have traveled both by air, by rail and by—I will resort to private automobile on tomorrow. In the last thirty days I made one trip to Washington in September, myself. I went by rail. And in August, I don't have all my records with me, but I would like to answer this way, if I can. I have to go on an average of about once a month. If one should take us over the last one year or three years, I have either been ordered in or I have felt that I should be to various conferences at least one a month to Washington or Philadelphia or to these points north. If those conferences are in New York, I have gone both by air and by Southern Railway. And when I go by train I have gotten off in Washington about 7:30 in the morning and on the other one at 4:30 or 5 o'clock in the morning. When I go to New York, I am due in there about 9:00 or 9:15. One does get in a little later in the morning; that's true.

When I go by train, the 6:55 train out of Durham would be the preferred method. Normally we have to dash at rather break-neck speed from the dinner table to get to the station at 6:55 from home. I have, assigned to my unit, government transportation, but I don't use it for this purpose. On one occasion recently I rode to Raleigh and took the Seaboard. I would say it is three miles, roughly, from my home to the Southern Railway station in Durham. There is a one-way street that goes right into the back of the station. The station is located very close to the center of the city, but I don't have to go through it to get from Forest Hills. From my home to the passenger station in Greensboro must be a good 60 miles. I have never driven it but it must be about 58 miles. If this train were taken off and I could not get a convenient air schedule, I wouldn't necessarily have to go by automobile all the way to Washington; I could drive to the Seaboard Station in Raleigh and catch the midnight Seaboard train or even one leaving earlier. Or one could drive to Greensboro and take the same train which I make connections with on this #13 if our

meeting time in Washington the next morning were, say between 8:00 and 10 o'clock, but if we had to get there in the evening this would then be impossible, and one would have to drive or go by air.

It is true that if this train was taken off, that I could drive to Greensboro and catch any of the trains that I can catch in Greensboro by taking this train. I would say this would be possible if one wanted to drive 60 miles. I wouldn't say that a 60-mile automobile drive was a very arduous task; it is not the most arduous task I have ever faced. Nor is a 27-mile automobile drive to Raleigh impossible. I would say taking off these trains would have certain deleterious effects upon the development of the missile program. In saying that I am speaking individually, not as an officer or representative of the Ordnance Department. Everything I am saying today I say it as an individual of which I have personal knowledge.

Col. Joyner:

Q. We have just gone over the deleterious effect it would have which would be at the most a requirement of the automobile drive of 58 miles or 27 miles to make the same or similar connection.

A. This might be true if the meeting were held at 8:00 o'clock in the morning. If it were necessary to go in the evening, this would not be so.

[fol. 148] Q. Explain that a little bit. What do you mean, necessary to go in the evening?

A: Well, what I am saying is that if the meeting were held in the evening in Washington.

Q. In Washington what time in the evening?

A. We will say 9:00 o'clock in the evening.

Q. Suppose you have got a meeting at 9:00 o'clock in the evening. What is the devastating effect on that meeting of taking this train out of there off?

A. If that were true, then the train doesn't get in Greensboro until 9:00 so it would be impossible to make the meeting if one were to drive to Greensboro. That's my statement, and one cannot rule out this possibility.

Q. Well, now, how would you make a 9 o'clock meeting in Washington if you got on #13 and went to Greensboro?

A. We would not. In that case we would have to resort to some other method of travel.

Q. Then taking the train off wouldn't bother that kind of a situation at all?

A. Probably not.

Redirect examination.

By Mr. Bryant:

The particular reason for going by private automobile on my trip tomorrow is that I must go to a point north of Washington and report there by ten o'clock tomorrow night with about 300 pounds of documents to the Aberdeen Proving Ground. Because of that load of 300 pounds of documents I will use private car. Also the time of reporting in preparation for the program for the next day and the additional planning will take place between 10:00 and perhaps 2:00 in the morning; and this deadline must be met. I have a meeting up until one o'clock tomorrow afternoon, and this is about the only way that I can get there.

I told Col. Joyner that taking an automobile to either Greensboro or to Raleigh was not impossible. He did not ask me what I would do with my automobile after I got to the station at either Greensboro or Raleigh. I would have [fol. 149] to make some plans about parking there or getting somebody to drive me.

People who come to Duke to the School of Ordnance Research use the train also in coming to Duke, particularly in the symposia or conferences we have where we have up to 90 to 100 people coming in on scientific symposia and conferences, they use the train. They arrive in Durham in the morning, attend meetings and leave to go back to their homes, wherever they may be, north of Durham on the afternoon train. This is the accepted way of trying to get in unless one makes other provisions, by other alternative methods of travel. If this train were taken off and they arrived at Greensboro at 5:00 o'clock in the morning from the North, they would have to come by automobile, bus or by some other method.

Recross examination.

By Col. Joyner:

When I take the plane to Washington or New York, or Philadelphia, sometimes I park my own car at the airport; and this occasion I may use a Government car to take me out and it goes on back to the office.

Q. Do I understand, Colonel, that your appearance in uniform does not at all import that you are speaking for the Army, that you have had no communications from the Army to come down here and say anything about this train and that you speak without any authority to speak for them?

A. I am speaking solely as an individual.

Q. And you are not in any way transmitting anything that you have been requested or authorized to say by the Army?

A. That's right.

Q. I wanted to make that entirely clear.

Examination by the Commission:

The car operated by Southern Railway out of Durham is a very nice car. It has roomettes and it is a very convenient car. The Car #9, the Clover series, is not what I would call up to standard. One night, while we were riding, [fol. 150] we were delayed some two or three hours because something became very hot under one of the seats in an old lady's compartment. The rest of us were in uppers and lowers; and the car is not quite a relic from the past but it is certainly not one that one would consider a modern means of conveyance. On the way back, the accommodations are very good. They are in a roomette type car, but then there is no diner, and one must do without one's breakfast if you want to commence work at 8:00 o'clock in the morning, you do without your breakfast, so in this sense, it may be considered an inconvenience, and it is not first class travel in that sense.

Speaking of my own opinion, I would say definitely that the appearance of the station, the attitude sometimes of the ticket agents of the Southern Railway in comparison to other modes of travel, the lack of convenient dining facili-

ties, the appearance of the stations is rather depressing and would detract people attempting to travel that way. If those conditions are improved so that they would be attractive to the traveling public, I don't think traffic would decline. I think rather with the things that are happening in the Research Triangle Area, which I am sure will be covered later, no doubt by others, that this will increase, if the rail travel were made as attractive as at least one other mode of travel which was discussed here today.

Recross examination.

By Col. Joyner:

Q. I hadn't thought it would be necessary to ask you any more questions, but one portion of your answer makes it necessary, I think, for me to ask you the question because of what I think is the duty I owe to an employee to explore and the duty I owe my client to explore. When you spoke of the attitude of the employee to discourage travel, I can't leave it hanging. Will you give the employee and the date and the attitude, please?

A. At least one instance on a date which I cannot recall [fol. 151] at the moment, we, in attempting to get a better connection at Greensboro, which is a rather depressing looking station, also, in comparison, one effort that we made to . . .

Q. Colonel, you say "we." I want you to make it specific and confine it to your own personal knowledge.

A. That's right. This is on my own.

Q. And try to name the date and the employee and exactly what happened.

A. I would say this was about a year, probably a year and a half ago, this one instance, when I myself tried to get a better connection at Greensboro, after having gotten off of the 6:55 car in Durham, and I asked the ticket agent if . . .

Q. Ticket agent at Durham?

A. At Greensboro, if they could find any space on the Crescent coming North on the car which stays over in Washington and allows one to get off at about 7:30 A.M.

I think that is the correct time, and the attitude of this individual behind the counter was such as to be of a distinct difference between the attitude that one normally finds behind the airline counter; and he took no interest at all in trying to find out whether there was space available out of Atlanta from which I understand it was to be released or in any other way tried to assist me. Now, this impression has stuck in my mind ever since and now I don't even bother to ask any more in Greensboro whether I can get space on this car or not.

Q I was trying to get space on the Crescent coming north. That gets in about 9:25, I believe, something like that, in Greensboro. I think we get into Greensboro about 8:45. I made the inquiry about getting space in the train that got in there at 9:26. Immediately thereafter. I would say it was 8:50.

Q. You can't be more specific about what the agent said or did except he didn't exercise what you thought was the proper interest in your situation?

[fol. 152] A. No, and if it had been a cursory thing I probably would have forgotten, but the impression is definite.

Q. Did he say that he had no space on that car?

A. He gave some short answer that indicated he was not going to find out whether there was any space available and besides he didn't think I could get it anyway. Now, those may not be the exact words.

Q. As I interpret it, the situation was that he told you, did he not, that he didn't have any space out of Greensboro on that car available?

A. This was not my impression. My impression was that he wasn't going to make any effort to find a space on this car regardless.

Q. The train at that time being probably between High Point and Greensboro, just 20 or 30 minutes away from Greensboro, was it not?

A. I don't know anything about the way that space is handled between Atlanta and Greensboro.

Q. But haven't you traveled on a Pullman enough to know that if the train is between stations and if there is no space

available in Greensboro you have to get it from the train conductor?

A. Well, maybe that is an additional inconvenience that I haven't envisioned before.

Q. How could that agent have possibly determined by any inquiry that space on that train had not been taken, say, at High Point or Salisbury?

A. Maybe he knew this but he didn't tell me this or indicate in any way that he was interested in my problem.

Q. And your comment about the attitude of the agents decreasing the patronage is confined to that instance?

A. There are others but I don't think it would profit the time here to describe them.

Q. If you want to leave it at that, it is all right with me.

[fol. 153] DR. SHERWOOD GITHENS testified as follows:

Direct examination.

By Mr. Bryant:

I live in Durham; outside of Durham, on the old Chapel Hill Road, approximately between Durham and Chapel Hill. I am a physicist, and a staff member of the Office of Ordnance Research, and my office is located at the Office of Ordnance Research in Duke University. Approximately 65 persons are employed at the office of Ordnance Research at Duke University.

Our principal function is to evaluate proposals made by university professors from points all over the United States and in Europe to determine whether or not the work they propose to do is of interest to the Ordnance Corps of the Army; and in those cases where we find the answer to be favorable and the funds available we arrange to contract for the research work. There are other functions, too, but that is the principal one.

In the performance of this operation, a large number of our staff members need to make trips to universities and to Army installations. Whenever we make a trip, we get a record like this after the trip is over of the financing involved and I checked my records for the fiscal year that

ended the 30th of June and found that I had made 28 trips in one direction in that 12-month period, using Trains 13 and 16. So this represents part of the 143 that the Colonel mentioned.

It didn't occur to me to make a count of the number of visitors during the course of the year, who come to the Office of Ordnance Research, but I have talked with various people in recent weeks, and generally it is agreed that the number of trips made to Durham would probably equal the number of trips that we make. That is probably about the same. I am not speaking now only of those who come on the trains, but the total number of visitors during the period of a year.

[fol. 154] Q. And can you state the approximate number who come on the trains, if that is the case?

(Objection.)

Mr. Bryant: I asked him if he would testify of his own knowledge. I don't want the guessing. Take your best knowledge.

A. Take tomorrow. We have approximately 20 or 22 visitors coming to a meeting tomorrow. That is why I have to be there. I know for sure that two of them are coming by train. I am going down to meet them. There may be more. I know that two are coming by train and going back.

In the case of people who come to my office for conferences, they can arrive in the morning and leave in the evening if they come from Washington, Baltimore, Philadelphia or New York by virtue of these two trains. Trains 13 and 16 play a very important part in my personal office or those of my office. As I have already stated, I have averaged better than one round trip a month using these trains in the last year; I have been doing that for seven years. I am a person who prefers to use the train if it is at all possible to do so. There are several reasons for this. One is that I happen to be so constituted that I get a slight headache, sometimes air-sick when I travel by air; and so I avoid traveling by air if I can possibly go by train, for that reason. In addition to that, I endeavor to get in as many hours per day as I can. By using these trains I am

able to work a full day at the office, go home, eat dinner, go down to the railroad station, get on the train and relax completely until arrival in Washington, Baltimore, Philadelphia, or New York. I prefer to do it this way. I am able to get in more working hours to be reasonably sure that I will arrive at the destination in the morning, well rested, without being air-sick, and furthermore, in the last seven years I have encountered enough occasions when traveling by air that I have become delayed and have not been able to get to a meeting that I had to be to at a certain time [fol. 155] that I found that under all these circumstances, it is easier and better—we plan a trip several weeks in advance—to get reservations on the train, and then be reasonably sure that the train would leave at the proper time and that I would make the meeting that I wished to attend. It is the reliability factor, which adds to all these others that I have mentioned. I will fly because I do have to go to relatively remote places like Chicago and Los Angeles, etc., and it occurred to me a few minutes ago to state that twice, now, I have arrived in Washington in the early evening by air and found it impossible to get on to Durham, and have asked and have obtained a voucher from the airlines and gone over to Union Station and taken the sleeper which leaves at midnight and that way insured getting home with reasonable night's sleep.

We have a young lady in our office who handles all of our reservations. Only on rare occasions when out of the city do I handle reservations coming back to Durham because usually our trips are planned well in advance. Because of the fact that I have always been able to plan my trips, I personally cannot claim any experience in trying to get reservations back to Durham; however, just last week when I was in New York visiting one of our contractors, I asked them how he was going to come. He was coming down on a trip in the near future, and he said . . .

Col. Joyner: Objection to hearsay.

Mr. Bryant:

Q. I can't ask you what he said. I must ask you to limit it to your own personal knowledge.

A. Well, my own personal knowledge is what he said.

Objection. Sustained.

I have never had any trouble because the Durham ticket office has been very good in getting accommodations if we ask reasonably soon in advance; that is, reservations on southbound train which becomes 16.

[fol. 156] There is no service for food on either of these Trains, 13 or 16. If there were a strike on the airlines or if the planes were grounded on account of weather, and if these two trains were permitted to be removed from the run through Durham, the only other mode of passenger transportation available would be private automobile or by bus or by going to Raleigh or Greensboro, all of which are not as convenient or as satisfactory as the Train System 13 and 16. In the operation in which I am engaged, the continuance of Trains Nos. 13 and 16 is a necessity and a convenience.

Cross examination.

By Col. Joyner:

On the average I get on #13 about once a month. I get on the Pullman there at Durham. Over a period of the last year, I would say concerning the average number of passengers that get on that Pullman car with me at Durham that I have seen as few as one or two others. I have seen as many as seven or eight, I think. The car is never full at Durham. We do pick up some at Burlington quite frequently. And, of course, there are others that join the car at Greensboro occasionally, too. This is essentially the starting point at Durham. Very rarely does anyone come through from Raleigh.

Durham County has more people than 100,000. The city itself is 85,000 roughly.

Further Direct examination.

By Mr. Jones:

Notwithstanding the fact that the train is scheduled at Greensboro at 8:50, it almost invariably arrives there at 8:30, 20 minutes early. I have never known it to be late, and I think that it has never been other than early to my recollection. What happens is that when the train pulls into the station at Greensboro, in recent years what happens is that a yard locomotive immediately comes to the rear end of the train and within two or three minutes after our arrival, hitches on to Car S-34, pulls it back and switches it over to Track #3, the middle, I think it is the middlemost track in the passenger yard. And the yard locomotive then un-[fol. 157] hitches itself and goes away and car sits there on the average, I think, for an hour and twenty minutes before it is moved again. What happens later is that along about 9:30 plus or minus, depending on how late the Crescent comes in from the South, and usually just before it arrives another or perhaps the same yard locomotive, I don't know which one, but a yard locomotive comes up to the other end of the car and pulls it down the track and waits until the Crescent gets in and then it shifts the car forward and puts it on the tail end of the Crescent. I think that the average wait in Greensboro before Car 13 moves again, after it is put on Track 3, is about an hour and twenty minutes.

In the last year, since there has been no mail carried by this train, and I think very little baggage or express, I haven't seen much because there is an express car on the train but it is usually almost empty. I see no reason why the train couldn't run at least an hour later. I have been studying this point because I am interested in this point. I would rather use that hour at home and not have to rush down to the station; in other words, if we could leave at 7:50 instead of 6:55, it would really improve the convenience to the traveling public of the use of that train, in my opinion, at least as far as we in Durham are concerned. I believe this is so, not only because there appears to be no dearth of yard locomotives to make the shift, and this train

is never late and, even if it were late, there is another train that goes up about two hours later, so that you could still get the car to New York in reasonable time, if it should miss the Crescent. Usually it is the Crescent that is late getting into Greensboro. There is another one at 11:50. It is the Peach Queen. That is the train to which Car 9 is attached which is then disconnected in Washington. It arrives at 6:45 in Washington. Car 9.

[fol. 158] Further Cross examination.

By Col. Joyner:

I have never had any official capacity in connection with railroad operations; none whatsoever. Let me put it this way, that in my college years I worked on a passenger steamship line on the Great Lakes, and there got familiar with railway operations, because we used the Railway Guide very frequently. I have never had the responsibility of making out a railroad schedule either for operating a train or switching.

Q. About this hour and twenty minutes I understood you to say that the passenger car, the Pullman car, in your opinion, stayed without moving an average of an hour to an hour and 20 minutes in Greensboro. That would mean that if it got into Greensboro station at 8:30, it would have to be moved from the track on which it arrives to this #3 waiting track that you speak of. That would take several minutes, would it not?

A. Five minutes at the most, because I have noticed that there have been some occasions actually when, unless one got up to that platform, you see usually one gets off and goes into the station, and there have been several occasions when I or someone else was chatting and got to the platform at the end of the car a little too late to get off before the locomotive pulls it away. In other words, this is very prompt. If it takes five minutes it comes to rest on the waiting track at 8:35, on the average. An hour and 20 minutes from that 8:35, that would be five minutes to ten o'clock, or 9:55. Perhaps my estimate that that car averages staying there until 9:55 is too high. The reason why I estimated

more than an hour was because the Crescent is quite frequently late; and, of course, if the Crescent is on time, I would agree with you completely that it sits there only an hour.

I agree with you that for the accommodation of the public, [fol. 159] the Crescent, which is a train running a long distance, has certain connections it must make. Now, if those connections are late, that frequently makes the Crescent late. Then you would not think that a responsible railroad officer would be justified in making a schedule which would rely on the Crescent being late.

By Col. Joyner:

Q. Now, then, about your getting in at 8:30, the Exhibit #1 filed in this case shows that #13 is due to leave Burlington at 8:02. Well, you are aware of the fact, are you not, that the train would not be justified and cannot leave there until the scheduled hour of departure no matter what time it gets in?

A. That's right.

Q. And between Greensboro and Burlington there are three flag stops, Elon College, Gibsonville and McLeansville. Have you ever known the train to stop at either of those points?

A. I don't recall any stops.

Q. But you realize that if there are flag stops, that if a passenger wants to get on at any of those stations, or if a passenger on the train were ticketed for that station, the train must stop and that takes time?

A. Yes.

Q. You realize that there is in Greensboro what is called a Four-Mile station, that is a station four miles out of Greensboro and that this train has a scheduled time for that stop, for that point?

A. This is beyond my knowledge.

Q. Well, will you take it subject to check, that the scheduled time on our train for that is 8:30 P.M. at Four-Mile point and from that point the scheduled time is 20 minutes into Greensboro, and the train can't leave that Four-Mile point until 8:30, so would you care to revise your estimate of arriving there on an average of 8:30?

A. I have gone down into the Greensboro station and there is a clock up on the wall above the tunnel that you come [fol. 160] under. I feel quite sure that I have seen that clock reading 8:30 and at 8:30 at times like that. The train flies between Burlington and Greensboro. They really let it all out. It goes much faster. I mean leaving Burlington it flies much faster than before arriving at Burlington.

Q. Let me ask you this with respect to the speed and making a schedule, if this railroad has committed itself to stop at McLeansville, Gibsonville and Elon College for the convenience of passengers; its schedule must make allowances for those three stops, must it not?

A. That is reasonable.

Q. And do you think it would be reasonable for them to eliminate it from the schedule, eliminate those three schedules, unless and until they have received permission to eliminate those stops from its schedule?

Mr. Burns: Objection—calls for conclusion of law.

Col. Joyner: He has stated a good many conclusions about railroad operations. I think this is within his scope.

Chairman Westcott: I understand him to state up to this time that the train, so far as he can recall, leaves Burlington and travels at a fair or rapid rate of speed until it gets to Greensboro, and that you do not recall the train ever stopped on flag stop at those points.

A. I do not recall any stop.

Col. Joyner: May I say this. He has also said that in his opinion, a lot of time can be eliminated from that schedule. He has expressed an opinion on that. My express question is whether in making a schedule, the schedule could be computed except upon counting or stopping at flag stops.

A. I think the schedule should be made as suggested, to allow for reasonable amount of time for intermediate flag stops.

Col. Joyner:

Q. Are you prepared to look at that schedule and say at any point where any time should be eliminated?

[fol. 161] A. The train arrives now in Durham, according to that schedule, it arrives and leaves Durham at 6:55. It usually sits in our station 15 minutes, 12 or 15 minutes, any way. It leave on time but it gets in real early. It practically loafs all the way to Burlington. After Burlington the speed is considerable. You can notice the difference. I think the roadbed is better, actually, but this is an estimate. The slowness of the travel that it makes to Burlington probably depends somewhat upon the flag stops that are in the schedule there. That would be logical.

Q. It is in evidence in this case, Doctor, that this train which has been called by the first witness in this case, a local train, having a lot of stops, I believe it is a schedule, either regular or flag stop about every five miles, makes an average of about 30 miles an hour, a little less than 30 miles an hour, are you familiar with similar schedules of local trains on any other line of railroad?

A. To the same degree that any other person would be, I would say.

Q. Are you in position to say that 30 miles an hour is average, below average, or above average elapsed time for a local train?

A. That would depend entirely upon the division and the railroad, I would think.

Q. Just one other line. I understood you, and I am not sure that I understood you correctly, to say at the conclusion of your redirect examination, that this car might be put on the train that gets to Washington about 6:30 in the morning?

A. I said that if perchance this train were to arrive really late in Greensboro, from my point of view as a passenger, I would far rather a hundred times spend the hour at home before taking the train than lose the two hours by having it go up on a later train by Greensboro. Fortunately, you have a train in reserve to handle the car in case it misses [fol. 162] the Crescent. If perchance it would miss the Crescent, it would go up on No. 30. The train that gets into Washington about 6:45.

Q. Now, that would serve the convenience of people going to Washington, would it?

A. It would certainly make them late into New York.

Q. What about the people from Burlington going to New York?

A. They would be late anyway because if the Crescent were that late—

Q. I thought that your hypothesis was that you had missed the Crescent, that the Crescent had gone ahead.

A. They couldn't have made the Crescent. Well, if you held the Crescent, let's see now where are we now?

Q. I thought your assumption was that you would have this 13 leave Durham at a later hour and take some chance on missing the Crescent.

A. Right.

Q. And if it missed the Crescent, it would catch the later Train No. 30 that gets into Washington about 6:30 in the morning. Will you accept subject to check that that gets in, from your knowledge of schedules, don't you know that that gets to New York about 11 o'clock in the morning, not earlier than that?

A. That is approximately right, without looking at the schedule.

Q. And therefore if you missed the schedule, if you gambled on a schedule and missed the Crescent, it might be a serious inconvenience to the passengers who were destined to New York.

A. The question here resolves itself into which is the greater inconvenience or convenience to people. And I am merely testifying that based on my experience which is considerable and as perhaps one of your best passengers, that I would rather have the train go a half hour or 40 minutes later because I know that there is practically—we don't have snow in North Carolina but once in a year or so. There are no factors which make this train tend to make this train late. It doesn't have to make any other connections except at the tail end of its run. That is where it is always there on time or early, so I think that perhaps I have overestimated the amount of compensation that could be made in this schedule, but I am sure that some could be made. Of course, if you get into New York at 11 o'clock Standard, that would be 12 o'clock Eastern Daylight. Which isn't good.

Q. Were you in the courtroom when one of the witnesses, I believe it was the first witness, who testified that Southern had foregone the opportunity of very profitable mail haul just in order to preserve that connection with the Crescent and make sure of arrival in New York at a convenient time; were you here?

A. No, sir, I was not.

Further Direct examination.

By Mr. Burns:

The present Crescent gets into New York at 9:10 a.m. Standard time; that is 10:10 Daylight. And on the other schedule it would get there at 12 o'clock, an hour and 50 minutes difference. If you got on the other train, the Peach Queen, it would only make an hour and 50 minutes difference.

Further Direct examination.

By Mr. Brooks:

I do not know whether or not the Southern Railroad has ever petitioned this Commission or the ICC that they not have to stop at these flag stops Gibsonville, McLeansville. They have not to my knowledge ever petitioned to give up those flag stops.

Further Cross examination.

By Col. Joyner:

Q. You are not prepared to say that your testimony with [fol. 164] respect to the precise operations in switching is in accordance with what actually happens; you know the car is moved, but how long it stays out there and when it has to go in on 38 or whatever switching movements are required would be within the knowledge of an operating officer and on that your information is not precise.

A. I haven't taken the watch and timed it. I have just been on the car and saw what happened and then I can give

the approximate times, and this is not my professional business.

Q. And the approximate operations of the car that comes off of 13 and goes on a waiting track and then later it is switched on 38?

A. That's right.

[fol. 165] W. R. BELFIELD testified as follows:

Direct examination.

By Mr. Dixon:

I am General Industrial Agent, Southern Railway System Lines. My office is in Charlotte, N. C. My assignment primarily embraces industrial development along the lines of Southern in the two Carolinas. I have held this position since March 1, 1952. My experience reaches back over 33 years in Southern's Traffic Department, of which its industrial organization is a unit. Since March 1, 1952, I have been exclusively engaged in industrial development work, entailing both supervisory and direct activities in this field.

[fol. 166] I have had occasion to study the industrial development history and potential of the area between Greensboro and Goldsboro, N.C., in which Trains 13 and 16 are now operated. It has had a great deal of my attention. I have personally made efforts to interest industry in locating there.

There has been a substantial industrial growth in this area in the past eight years. Especially gratifying is the healthy trend toward diversification. Perhaps the largest of the new industries in the cities along this line of railroad is the Westinghouse meter plant at Raleigh, and it is an outstanding example of diversification. Other substantial plants introducing entirely new products to the area are the International Paper Company (milk cartons), and Kellogg Switchboard (microwave systems) at Raleigh; Griggs Equipment, Inc. (school equipment) and Shallcross Manufacturing Company (precision instruments) at Selma; Drueding Brothers (chamois) at Goldsboro; and Wright

Homes (prefabricated houses) at Durham. Additional examples of growth are large new warehouse operations of Winn-Dixie Stores and A&P, and expansion of Colonial Stores' similar plant, in Raleigh. In the overall area there have been many other new plants and expansions of varying types and sizes.

There has been new industry, or expansion of existing industry, in the Durham area in the past several years. For example, as to new industries: In 1954, the Lee Dyeing Company of North Carolina, fabric dyeing, at Butner, which is in the Durham area. The Mount Hope Finishing Company, which finishes fabrics, located at Butner. The Athol Manufacturing Company, Inc., located in Butner in 1955, making upholstery fabrics. In 1956, Lowe's, Inc., building materials, at Durham. Wright Homes, Inc., prefabricated homes, in Durham. In 1957, Croscill Curtain Company, curtains, of Durham. In early 1958, both Borden Brick and Tile Co. and W. L. Robinson Tobacco Company [Vol. 167] expanded their Durham operations.

In my view the potential of the area for continuing industrial development is excellent. In my opinion, this area holds great promise in the field of industrial development. Here let me say that the new Research Triangle will give tremendous impetus to this growth and create ever-increasing industrial interest in this section.

The Southern has taken other action which will enhance the industrial potential of this area. Further and substantial impetus to industrial growth along this segment of our railroad will result from Southern's acquisition of the Atlantic & East Carolina Railway between Goldsboro and Morehead City, providing single east-west trunk line rail service to and from this important North Carolina port. We anticipate continuing attraction of new industries requiring port accessibility to communities all along the Greensboro-Goldsboro line.

In regard to what factors are presented in attempting to attract an industry, as a general practice, an industrial prospect will furnish us with certain specifications as to plant site and operation and we undertake to match these with the resources in our territory. The basic requirements are adequate acreage and water supply where there is used a large amount of the latter in processing. We are usually

given a geographical area, at times quite broad; and the site finally selected may be in close proximity to raw materials, or near the industry's principal markets, or at some intermediate point. There are, of course, many other factors—labor supply, industrial relations history, transportation, power, community facilities, living conditions, etc. All of these are given careful study before a final decision as to new plant location. I may here add that the history of community attitudes toward the economic management of business as reflected by newspapers, local governments, [fol. 168] civic groups and the like are closely examined. An industry will look with jaundiced eye upon records of community pressure through these media for procedures adversely affecting profitable operation.

In the course of my work I discuss plant location with many industries, directly, and with their engineers or other representatives. We have calculated that new plants and expansions along our System lines will average about one per day; and since the Carolinas are a fertile industrial development field, my personal contacts of this nature are numerous. I have at first-hand observed a wide cross-section of plant location requirements and absorbed the views of industrial representatives working in this field.

As to what aspects of transportation are of most interest to prospective industries, freight rates and service lead by a substantial margin. Passenger service seldom enters the picture. Any interest in the latter involves commercial air service between the industry's headquarters and the airport nearest the plant site. Also growing is interest in smaller airports suitable for use by private planes, which many industries now own. However, an industry's primary concern with passenger transportation, we have found, is adequate highway access to the plant site; and, if the location is near one of the larger communities, the availability of suburban bus service.

None of the industries that have located in the area now under consideration have, to my knowledge, shown a need for rail passenger service. I personally know of no industry that has been lost to this area because of a lack of rail passenger service, or the possibility that the operation of these two passenger trains would be discontinued. In meeting with

representatives of companies seeking sites, and in showing them possible locations, I have not had any use for trains [fol. 169] 13 and 16. We have not used them in showing the territory, or to meet with industrial representatives. Nor do I know of any industrial representatives who have used these trains in getting to and from this territory. Air transportation to the nearest airport, thence passenger automobile, is the order of the day.

New industries have located on this line despite the fact that Southern has discontinued two pairs of passenger trains on the Greensboro-Goldsboro line—Nos. 21 and 22 in September 1954 and Nos. 111 and 112 in April 1958. For example:

Year	Name	Produce	City
1955	Pressley-Morrow Mfg. Company	Children's wear	Burlington
1955	Burlington Plas Tech Corp.	Plastics	Burlington
1956	International Paper Corp.	Containers	Raleigh
1956	Winn-Dixie Stores	Foods	Raleigh
1956	Wright Homes, Inc.	Prefabricated homes	Durham
1957	Croscill Curtain Co.	Curtains	Durham
1958	Kellogg Switchboard & Sup. Co.	Microwave Systems	Raleigh
1958	Griggs Equipment, Inc.	School Furniture	Selma
1958	Shallcross Mfg. Co.	Precision Instruments	Selma
1959	Patelos Door Corp.	Doors	Goldsboro

I can cite instances where substantial new industries have [fol. 170] located or will locate in my territory in the ab-

sence of any passenger service at all. The Atlantic and East Carolina Railway, part of Southern Railway System, operates no passenger trains. The Union Bag-Camp Paper Corporation, in 1956, acquired some 5,000 acres of land for use as a site for a multi-million-dollar paper mill, at Tuscarora, near New Bern, N.C. At Earl, N.C., on the Southern near Shelby, N.C., Fibre Industries, Inc., has under construction a \$50 million synthetic fibre plant. This firm is controlled by Imperial Chemical Industries and Celanese Corporation of America. No passenger service is operated on this line.

At West Shelby, N.C., on Southern and Seaboard, in 1958, Pittsburgh Plate Glass Company—Fiberglass Division—constructed a \$30 million plant. The dedication for this plant is October 21, 1959. They have just announced in the past two weeks a 50 per cent expansion of this operation. There is no passenger service on either railroad, on the line serving their plant.

No representatives of any of the new industries which have been locating in this area in recent years have expressed to me any dissatisfaction with the present passenger service, or any concern over the efforts to discontinue this service.

The expenditure of money by the Southern Railway in promoting the industrial development of the area it serves, including that between Greensboro and Goldsboro, is certainly substantial. I would estimate the total expenditure in that field is over \$1 million per year. That money can only come from the railroad's freight and passenger revenue; and every dollar lost through unprofitable passenger service leaves that much less available for necessary and worthwhile purposes such as industrial development work. [fol. 171] As the man primarily responsible for the direction of industrial promotion work on the Southern Railway in this area, it is my judgment, based on experience, that the discontinuance of these trains have no adverse effect whatsoever on its development. I believe that the operation of these trains has had no influence on the location of the many good industries which have come into the area in the last eight years; and I know of no industry which has been lost because of any inadequacy of passenger service or the

possibility that it would be discontinued entirely on this line. I have found that industries like to locate on strong railroads and in vigorous communities. The maintenance of unprofitable passenger service does not make for a strong railroad; and if industrialists find that a community insists on the continued operation of services which are not needed, they, in my opinion, become somewhat suspicious of the progressiveness of such a community.

Mr. Burns: Objection. He is telling us what the industrialists think. He can say what he thinks but he can't state what somebody else thinks.

Chairman Westcott: Do you want to restate your answer as to what your opinion is? Can you actually say these people are suspicious of a town that insists on a railroad continuing passenger service?

A. No, I say they are suspicious of the town that will make demands upon any of its industries, including the railroad, to use unsound business practices or operate services which they do not need and on which they lose money.

Mr. Burns: Move to strike the entire testimony.

Chairman Westcott: Motion overruled.

Q. That is your opinion?

A. Yes, sir.

It is my firm opinion that the discontinuance of Trains 13 and 16 would have no adverse effect upon the Research [fol. 172] Triangle. The travel habits of those directly engaged in Triangle enterprises, and other industries attracted thereby, would, in my opinion, follow the pattern I have previously outlined for industry in general; that is, air and highway would be the principal modes. I would infer the Triangle people themselves place no great emphasis upon rail passenger service. Section 1 of the Triangle's latest brochure, entitled "Location and Access," consists of three pages. The first is a map of the Eastern United States on which is a diagrammed air service to and from the Raleigh-Durham Airport; the second is a similar map on which is outlined the Interstate Highway System; and the third is a North Carolina State map with principal

highways delineated. No reference is made on these three access maps to the railroads.

Cross examination.

By Mr. Burns:

I have no figures as to the number of industries that have located in the State of North Carolina in places where they do have rail passenger transportation in the last five years, but there are a considerable number. I don't know that there are a whole lot more of them that have located where there is no rail transportation. I would have to make a compilation. I don't have the figures at hand.

I am in charge of or responsible for the handling of industrial development along the Southern lines in North and South Carolina. I try to sell to potential users such phases of Southern's transportation in which they exhibit an interest. I tell them about everything I think would be of interest to them. I find that passenger service is not a factor with most people. If they ask me, which is seldom, I tell them about passenger service. I do not necessarily tell them about passenger service unless they ask me.

We have other witnesses who will testify about advertising of passenger service. I do know that the company [fol. 173] advertises. It is my company's policy to encourage the use of these trains wherever it is possible. I would say, but we have another witness who is going to talk about that. I don't make the company's policy. I know they use folders and advertise. I know in general what their policy is. The policy is to make every dollar they can, and if it is through passenger service they will try to do that.

At the time the industries to which I have referred located on the line of Trains 13 and 16 there was passenger service available.

I do not intend to take credit for all of the industrial development in this State. No one man can take credit. I will stop there. No one man can take credit. I flatter myself that I played a big part in it.

It is not necessarily a fact that I find that the men who come to investigate industrial sites, etc., are generally men

with great pressures on them and that they are in a hurry to accomplish their business and return. I have worked with some of them that took three years on the job. I spent 14 weeks with one of them in this State on this line. No, not on this line, in this State. On the A&EC Railway. That is on the Southern Railway System line. It is not on the Southern Railway Company. Southern Railway Company is the one that is involved in this one.

Cross examination.

By Mr. Bryant:

My job with Southern is to attempt to locate an industrial plant or an expansion of plant on the line of Southern Railway in North and South Carolina. That is my particular duty. We feel that the plants already located on the Southern Railway Company lines should be properly served.

I say that the people with whom I have dealt rarely, if ever, mention passenger service to me. I talk to these new industries. I very rarely talk to people in the industries already established. I am trying to get new ones. I tell [fol. 174] all these established industries if they want assistance from me, call me, but normally unless it is a question of expansion, I have no contact with the existing industries until they think of expanding or branching out; the existing industries are not my contact.

I know that Liggett & Myers Tobacco Company, American Tobacco Company, Wright Machinery, and the Erwin Mills, have protested the removal of these trains. They have already established their business on the railroad line. None of the people with either of those four companies have ever approached me about the rail passenger service. I have not talked to them on this subject.

I gave an estimate that new plants and expansions along our system lines would average about one per day, that is a working day, five days a week.

Q. Five days a week. Now, do you include this territory from Greensboro to Goldsboro in that estimate?

A. Yes, sir. It is an average of the whole System, 13 States and the District of Columbia.

Q. And you think this reflects the average Goldsboro-Greensboro line?

A. I don't think that; it may. I haven't figured it up as a separate segment.

Q. Well, are you denying that it isn't an average segment of the System?

A. I think it is better than a lot, better than a lot of our System in its industrial growth. The State of North Carolina is one of the outstanding industrial development States on our railroad. The two Carolinas and possibly the Atlanta, Georgia, area, Birmingham are leading the whole rest of the railroad in industrial development.

Q. So that, as I understand you, then, in your estimates for future expansion, you would say that this area would be above the average; is that correct?

A. I think that the whole State of North Carolina will continue to be, if not above it, it will be well up in the list, yes.

[fol. 175] Q. Mr. Belfield, let's talk about the area now from Greensboro to Goldsboro. Would you say that that is above average?

A. I think it has very high potential, above average, yes.

Q. So then, on this part of your System from Greensboro to Goldsboro, you would expect at least one plant, an average of a plant per working day, an expansion?

A. I don't know whether you can put that average on one segment or not. We take the number of days, the number of industries per working day and divide into it to get one.

I see no indication of interest in passenger service that would lead me to believe that any industrial expansion would depend on the continuance of that operation or require it. I think that the airport is going to grow.

If there is a strike on an airline then there is no service. That also applies to railroads. When there is a strike on an airline it does not carry passengers, or there is no passenger service. There is no passenger service by the railroad if you discontinue the rail service, but there would be by highway, or private plane, or bus. If there is a weather condition which makes it necessary for the cancellation of a plane flight, then if there is no passenger ser-

vice, that leaves you with either a bus or a private passenger car or private plane that might be able to fly in weather when commercial airliners couldn't.

Q. Mr. Belfield, your contacts and relationships are with those interested in the industrial development, and you have attempted to appraise the need for passenger service based upon those industrial developments, have you not?

A. My continued contacts in that field.

I have not attempted to take into consideration the needs of the public therein other than those shown by the industrial development. Everything else is out of my field. Hospitals, educational institutions and things of that kind are not in the scope of what I am interested in.

A number of industries in North Carolina located on the Southern Railway System have been located on that System during the times when we had passenger service for them.

I did not say that the Southern had been directly interested in the development of the Research Triangle. I said we were very much interested in the development and the beneficial effect it will have. We assisted in getting maps together and that sort of thing and also I have conferred personally with them on several occasions, Mr. Shay and Mr. Stewart.

In answer to the question, "Is the expenditure of money by the Southern Railway in promoting the industrial development of the area it serves, including that between Greensboro and Goldsboro, substantial?" I answered, "It certainly is. I would estimate the total expenditure in that field is over \$1 million per year." I couldn't say whether the Southern Railway Company refused to spend any money toward the promotion of the Research Triangle.

I referred to the first three maps in this brochure that showed the airlines. The first section of this brochure says location, and Section 1, Map No. 1, shows the airline service to and from Raleigh. The second map shows the interstate highway system of the Eastern United States. The third map shows the State of North Carolina with the principal highways delineated, and the railroads are not on any of those three maps. I have examined the balance of the pamphlet. The map shown on No. 2 is in the section en-

titled Triangle Area which shows the existing development. It shows all of the railroads in the general area. It shows the Southern. It shows the Southern is going directly by in contact with the Research Triangle Park. When it shows the railroads there, the Southern was not left out. It is in [fol. 177] there with the geographical fixture, but it is not in the access department.

I have examined the publications of the Research Triangle. In their earlier brochure they made some brief reference to passenger transportation. This is the latest one.

Q. Have you seen the one which I now show you?

A. Yes, I have seen that.

That contains a reference to the fast and comfortable Southern and Seaboard Air Line Railroad trains traveling overnight from Raleigh and Durham north and southward to New York, Washington, Atlanta and Miami. Since at the time it was printed Trains 13 and 16 are the only ones left at Durham, when they said that the fast and comfortable Southern Trains travel northward and southward, it must have had reference to these Trains 13 and 16. It has reference to that now because we haven't added any since that time. They are the two which we now propose to eliminate.

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[fol. 178] J. M. WHITE testified as follows:

Direct examination.

By Col. Joyner:

I live in Raleigh, N.C. I am Executive Director of the North Carolina Railroad Association. That Association embraces all of the major lines and most of the short lines in North Carolina. I have been connected with that Association since its organization in 1949.

I entered the Legal Department of the Norfolk Southern Railroad on July 16, 1916, and remained in that continuously until 1949, in various capacities. In my service with the Norfolk Southern I had occasion to travel extensively throughout Eastern North Carolina.

Taking into consideration Weldon, N.C., where the ACL enters from the North, and going down to Rocky Mount, Wilson, Goldsboro, Wilmington—east of that line there is passenger service on the Seaboard Air Line Railroad from Norlina, N.C., to Portsmouth, Va. Part of that railroad lies east of Weldon. There would be approximately 40 to 50 miles of railroad from Norlina to the North Carolina line. That line would serve six or seven stations. With that exception there is no passenger service east of the ACL line from Weldon to Wilmington. The last major passenger train removed east of the ACL main line that [101. 179] I have described was the train from Rocky Mount to Portsmouth, Va., that ran through Tarboro and Hobgood, Gates and up into Portsmouth. That train was removed about five years ago. I was familiar with the general situation throughout that territory with respect to railroad passenger service in the late '20's, 1925, before the development of our highway system. It was very extensively served by passenger trains on all of the railroads that cover the territory. In a general way I have been familiar with the general conditions, economic and industrial, through that section in the last ten years. I know of no instance that the lack of passenger service has had any effect on the location of industry or the operation of industry in that territory. The large DuPont plant located north of Kinston in 1951. It may have been 1952. That is quite a large plant. At that time, there was no passenger service whatever. No railroad passenger service at Kinston. The nearest railroad passenger service was Goldsboro, and that is 26 or 28 miles from Kinston.

Cross examination.

By Mr. Bryant:

As to whether the area between Norlina and the North Carolina state line is predominantly agricultural, I wouldn't call Roanoke Rapids and Weldon agricultural sections. I wouldn't agree that the remainder of the section is primarily agricultural because the volume of industry at those two points is greater in comparison with the little area

between Roanoke Rapids and Norlina. I would say that Chapel Hill, Durham and Burlington are industrial type cities.

You have got Duke University in Durham and you have got Duke Hospital in Durham, and you have got the State Hospital in Chapel Hill. You have also got the Veterans Hospital in Durham. The State Hospital at Butner is not in Durham and wouldn't be served by the passenger train at Durham. Passenger service there is usually at Henderson. Some of the Butner patients do use Durham hospitals. [fol. 180] I would say that the section is one in which hospital and educational facilities are pretty well concentrated. In the Durham area there is a rather high concentration of industrial establishments. You have the tobacco factories there. The same is true of Greensboro. It is true of Charlotte and a dozen other places. Durham is no isolation point as to its quality of hospitals and its quality of industrial plants.

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[fol. 181] MRS. MARY BIDDLE TRENT SEMANS testified:

Direct examination.

By Mr. Brooks:

I live at 1415 Bivins Street, Durham, N. C. I personally have lived in Durham 23 years. My family has been there since right after the Civil War. My grandfather was Mr. Benjamin N. Duke; my great-grandfather was Mr. Washington Duke. My family has been connected with the railroad. My grandfather was a Director of the Cape Fear & Northern. He was a Director of the Piedmont & Northern. He was a Director and President of the Durham & Southern for many years, and he owned a large part of the Durham & Southern which passed on to my mother, and she owned a large part of this until she sold it just a few years ago.

I held office for four years as a city alderman or councilman of the City of Durham. [fol. 182] For two years of that time I was a mayor pro tem and at the present time I am a member of the City-County Charter Commission, but

I am not in the employ of the City of Durham in any capacity. I am not a pressure group except as myself.

In my immediate family there is my husband and myself and six children. As far as passengers on the railway, my husband, myself and four children over 14.

I am a Trustee of the Duke Endowment.

So far as traveling over the railroad in question is concerned, I would like to say, first of all, that I am a frequent user of the railroad. First of all, I have to make a trip every other month as a requirement of my trusteeship on the Duke Endowment. Then I have three children away at school, at the present moment in Baltimore and Philadelphia. They use that train, Train #13 going and 16 coming, to reach these points and back, and my husband and my daughter in Durham and I use this for visits to them and then, of course, they use it. My husband also uses the train for medical meetings frequently, and I would estimate that we would make about an average of about three of us making a round trip a piece a month. It averages out that way, with several members making more trips, but the average would be about that number.

I have kept a record of the amount of funds spent by me and my immediate family to and from Durham, when we either leave on Train 13 or 16 and arrive back on the other one. I have an accurate record. I have all of the evidence and so on here. I can tell you to the amount of cents the money that we have spent with the Southern Railway from June, 1958, to June, 1959. I have all the evidence here, and it amounts to \$3,657.88.

I prefer for my daughters to ride that train going to and from school, to begin with, because we all like that [fol. 183] train. I would like to say that riding the railroad has not yet been discovered to be an unAmerican activity. We really use and believe in railroad travel. I have been brought up that way and this is part of my life. None of us use the airlines to any extent. I use it not at all. To begin with, there are many people who know and instinctively that they have not proven that airline travel is completely safe. I understand the Government doesn't even require that its people go on airlines if they do not want to do so. We have not a very large family outside of

my own, and I feel that the safety factor is a great factor with us. Therefore we do not use airlines; and for long trips we do not like to use automobiles. Then, again, it is very convenient for us to get on and go to the points which I pointed out, Baltimore, Philadelphia, New York, in addition to which Pullman travel of this kind, getting on at home and traveling North is very good for young girls of the ages of our family. They travel alone. They are well taken care of. They get off at the point designated and it is a very safe method of travel for those girls. We like the train.

There is no diner when you leave on the Durham train in the evening. It has been brought out in the testimony here that there is no diner from Durham to Greensboro. The hour of the departure of the train makes eating a problem. It is true that one can get the Crescent going north and enter the diner at 9:30 if that is possible. The Durham train is the last part of this Crescent as it is hitched on. The diner is there but you have to walk several cars down. So it could be considerably after 9:30 when you enter that diner, and as the diner closes at 10:30, the argument which several people have used in the past, that the diner is there, is a pretty inconvenient sort of argument, and it is not conducive to a correct eating time, and in fact 9:30 is pretty late anyway. We don't live in Europe. This is a very poor argument.

[fol. 184] When you leave on the train in the evening from Durham, you can make proper connections going North. You can make connections going North. What Dr. Githens said is true. There is quite a wait in Greensboro. It is perfectly true that the train comes in at a designated hour of 9:30, but it doesn't leave until 9:50. Passenger travel going south is very important because it used to be that we could leave on Train 13 and plan to go south on the Atlanta train. This has not been brought out here adequately, and the connections south have been changed, so that if you are a Durham passenger going from Durham to points south, you have missed it by almost an hour when you get there. In other words, the train going south leaves Greensboro at 8:00 o'clock. This was not true before. You used to be able to get it after 9:00 and make Southern

connections, but now you either get it at 8:00 o'clock, which you have to do some other way. You can't get it by 13, or you have to wait until 12:20 A.M., and if you are a coach passenger, I happen to know the only connection south is on the 8:00 P.M. train, and I would like also to bring out the fact that I failed to mention in the dining facilities, that you can get breakfast on this train if you are going to Philadelphia and New York, but if you wish to get any breakfast between Washington and Baltimore, they refuse to serve you. Even though the diner is there and the crew is there, you cannot get served. You can't get service until after the train leaves Baltimore.

In making my reservations, I make a personal telephone call to the Union Station ticket office. The office is open from 10:30 A.M. until 1:30 P.M. and from 2:30 P.M. until 7:00 P.M., with one person in the office. If you do not call between these hours to make reservations on the Pullman, there is no one at the station at any other time to make reservations at the Union Station. There is no telephone number listed in the book saying where you can call between [fol. 185] times, and there is no indication as to what you can do after hours and on week-ends, etc., so that it is a complete mystery and there is no way of telling what you could do. There is nothing listed in the telephone book giving the number in Greensboro that you could call to make reservations or giving the number in New York or Washington, and it is a fact that the Seaboard Air Line Railway that has no passenger service coming to Durham whatsoever does list the number in Raleigh that you can call.

The morning train arrives in Durham just shortly before 8:00 A.M. There is no one in the station at that time. The baggageman is on the platform but there is no way that you can find out what time that train is coming in. Therefore many people who come into Durham are met by people who have to go down to the station several times if that train happens to be late, and these people had no way to ascertain whether or not the train was on time or whether the train was late.

I certainly do not feel that there is adequate service at this station and I feel so strongly about it that I attempted

to find out if there were other facilities that one could have, any other line afforded, simply because I know that the passengers are there. It happens that the same Seaboard Air Line Railway that does not furnish Durham with any passenger service in or out employs one city passenger agent, one ticket agent, two ticket sellers and one relief seller of tickets in their office in Durham, and they also run a truck between Durham and Raleigh to take care of the baggage, so I submit the passengers are there if the facilities were there. In other words, the Seaboard has an entire personnel over there to obtain business to ride on the Seaboard in Raleigh. And the Seaboard advertises the train and where they can obtain tickets, and I have received brochures in the mail and postcards promoting the line, [fol. 186] in the mail, just as recently as a few weeks ago I received this in the mail. They do actively solicit passenger service. Insofar as I know, the passenger service that the Seaboard obtains from Durham to ride trains leaving Raleigh or coming to Raleigh, justifies the employment of a city passenger agent, a ticket agent and two ticket sellers and a relief seller in their office there. I might say it is very discouraging because I really believe in Trains 13 and 16 and I feel that the passengers are there to use it if they knew more about it.

I have seen nothing whatever in the last seven or eight years regarding any advertisement in the Durham newspaper indicating what time the Southern train would leave or arrive in Durham, or any indication in the papers that they are advertising for clientele to ride those trains, no promotional work at all. All of my information came from inquiry and experience in riding the trains, and because I believe in the railroads and I also believe firmly and absolutely, I am convinced that Durham is a wonderful home town and I am a devotee of my own home town, and I believe that the health of America could be improved by more people devoted to their communities; and I really feel that it would be a devastatingly poor psychological move for this to be removed from Durham, from my own personal viewpoint and also from the city's viewpoint, and I believe so completely in my community that I would do almost anything to keep it there.

Q. Since you have filed your motion to intervene, have you been contacted by many women in Durham with reference to their children and their young girls having means of transportation?

Objection. Overruled. Exception.

A. I have.

I was asked to express to this Commission their views about having this train to stay on in order to transport the [fol. 187] young girls and women going to and from Durham, because there are those people who send their children to boarding schools and other colleges away.

I know that many patients use this train both ways and I travel with them a good many times. Patients use this train to get to and from Duke University Hospital. Unless they use this train and arrive in Durham on this train, they would either have to come some 25 miles from Raleigh or some 55 miles from Greensboro in order to get to Duke University Hospital. For many of them it is impossible to ride the bus and they have no one to meet them.

I appreciate this opportunity and it really means something to me. Any time I am able to serve the City of Durham, I am anxious to do it, and, as I said before, I want to reiterate that I have no motive other than to try to help the community, and I wouldn't want you to think that anyone had asked me to do it.

From my experience in the use of this train, I absolutely feel that the train is necessary and there is a need for it for the citizens of the community, and I shall continue to use the train and feel that many others would. I feel quite keenly that there has been no effort made to solicit passengers, that it almost seems as if the railway discourages passengers, and I have gone into this at quite some length and have filed a good deal of it with the Commission here. I feel that there has been no creative imagination used in dealing with this. I do not think that they have reached the source. I have seen other railway lines clear up several of these matters without resorting to taking passenger service off. I think this is complete capitulation, which is not according to the American capitalistic methods of doing business; and I feel that it absolutely shows a lack of crea-

tivity in the running and operation of the railroad. I think that other methods could be used to solve their problems which I am sympathetic with and would work night and [fol. 188] day to help them solve, but I do not think this is the way to do it.

Cross examination:

By Col. Joyner:

With reference to the Seaboard service in Durham, it is true that the Southern Railway main line goes down to Atlanta and then on to New Orleans. It does not have a satisfactory connection with Florida. The Seaboard does have some very fine trains out of Raleigh that terminate at Miami and St. Petersburg. The Seaboard makes connection at Miami with ships or airplanes for South America and the Bahamas. They get a good deal of Florida-South America and southern business out of Durham. The Seaboard is closer than the Coast Line.

I think there would be more passengers like me if the Southern gave them the opportunity of knowing about and advertising it.

DR. ROBERT S. RANKIN testified as follows:

Direct examination.

By Mr. Bryson:

My residence is 1227 Vickers Avenue, Durham, N.C. I have lived in Durham since 1927. At present, I am Chairman of the Department of Political Science of Duke University. I have held that position since about 1940. I am connected with Duke University prior to that time. I started as Assistant and then as associate, and then professor, the usual ladder.

I am a member of the City Council of Durham. I have served in that capacity for five years.

During recent years I have observed growth in the City of Durham and the area adjoining the City and the Duke

University community. The growth has been in population and area and industry, and in the community as well, and in students and faculty members. The activities at the University, such as meetings, institutes and such matters as that are many and varied. In addition, we attend meetings. We go places and do things.

[fol. 189] I personally make use of the passenger service in and out of the City of Durham. As to how often I have made use of it in recent months, I will go back to January, 1959, of this year. Once every two weeks I have had to go to Washington to do work as a consultant; and I have down here the trips that I have made to Washington where I made use of the Southern Railway. On January 6, January 25, February 9, February 23, March 9, May 19, June 9, June 14, June 29, and July 27. When I say I made use of the Southern, I mean the Southern Railway passenger train operating out of the City of Durham. I use this train because it is the most convenient to me. That is because my work started at 8:30 in the morning in Washington. I can get on the Southern train and I can get into Washington and stay on the sleeper until 7:00 o'clock, eat breakfast and I can get to work by 8:30. Should I go by air, the plane leaves approximately at 8:00 o'clock. It gets into Washington supposedly at 9:10, but sometimes it is very difficult to land and then to unload, so it is generally at least 9:30. Then I must catch the limousine or taxi over to the office. In addition to that, it has been operating on Daylight Saving Time, so I lose an hour, and it puts me in my office at 11:30 instead of 8:30 in the morning. Therefore it is certainly convenient to me to use this train.

As to other means of transportation to get to these early morning meetings, I could drive to Raleigh and catch a Seaboard, but then the train goes through Washington at 4 o'clock. There is no Washington Pullman on the Seaboard train. It is impossible. I would have to drive my car and get up in the evening and spend the night. That would be the only other way.

I would say that the Southern Railway Company has made no serious effort to advertise its travel facilities on these trains in the University community. Usually when I

get in contact with the agent she gives very good service, but her hours are such I can never remember when she is [fol. 190] there and when she is not. I remember on Washington's birthday I tried to call several times. I could never reach the station. When I went down there the window was closed, and I got on the train and finally bought my ticket in Greensboro to Washington.

I know that my colleagues at the University make use of these trains, but to what extent I couldn't say. I have an opinion as to whether or not the people in the Durham area would have adequate transportation facilities out of the City of Durham to Washington, Philadelphia, New York and other points north and south. My opinion is we really need the train. If anybody is in similar circumstances to myself, the train is needed and needed badly.

Q. If the Commission please, I would like to make this statement. I could develop the testimony by Dr. Rankin which would corroborate Mrs. Semans' testimony with respect to service on the local trains. I tender him to the opposing counsel for cross examination on that line, in the interest of time.

Chairman Westcott: You tender him on that line of questioning?

Mr. Bryson: Yes.

Chairman Westcott:

Q. Did you hear the testimony of Mrs. Semans?

A. Yes, sir.

Q. Would your testimony be substantially the same along that line?

A. It would be similar.

Cross examination.

By Col. Joyner:

I have been living in Durham since 1927. There have been other railroads running into Durham. They are the Norfolk & Western, the Durham & Southern, the Seaboard, and the Southern. The Norfolk Southern came from Nor-

folk. I don't know whether the Norfolk & Western had until 1957 a train from Durham to Lynchburg connecting with Southern Railway at Lynchburg. It could be right. [fol. 191] I also remember that the Seaboard had passenger service from Durham to Henderson, if you call it that. It was very inferior service. It was a mixed train with one car as I remember it. The Seaboard still runs a line of railroad from Durham to Henderson. It handles freight out of Durham. I don't imagine that any of the other railroads, the Seaboard, Norfolk & Western, Durham & Southern, and the Norfolk Southern handles passengers. Of course, I might have taken the same position at that time. At the time, the Norfolk & Western discontinued its passenger service, I thought it was a little bit inconvenient to me also.

A good many of my associates and I, myself, sometimes use the airplane. When I do, I usually drive to the airport. I don't know how far it is from my home to the Raleigh-Durham Airport, but I imagine it is around ten miles, something like that. That is approximate. I do not know. I would say that the airport facilities at the Durham-Raleigh Airport are certainly equal if not better than any city in North Carolina. Greensboro and Winston-Salem might have equal. I just don't know.

I am on the City Board of Durham. It is a fact that the City of Durham makes a contribution to the Raleigh-Durham Airport. It is awfully hard for me to call it a contribution. It is our ownership of the airport. I wouldn't call it a contribution when we are running something that belongs to us. It is owned jointly by the City of Raleigh, County of Wake and the City of Durham and the County of Durham. It costs the City around \$10,000 to operate. I am frankly not sure whether it costs around \$12,500 a year.

Redirect examination.

By Mr. Bryson:

Q. Dr. Rankin, one more question. Mr. Joyner asked you about the use of the airplanes out of the Raleigh-Durham Airport. Have you ever had any experience when you

[fol. 192] were unable to get a plane out of the Raleigh-Durham Airport?

A. Weather.

Q. Any other?

A. Well, during the strike, certainly I was unable to get on in the fall.

Recross examination.

By Col. Joyner:

Q. I hand you, Doctor, what purports to be a report on the audit of the City of Durham, North Carolina, year ended June 30, 1959, Ashlin Thomas and Knight, Schedule F-8. I wish you would read what is there relative to the Raleigh-Durham Airport.

A. It is properties.

Q. What is it?

A. \$246,000.

Q. The equity of Durham, Raleigh City equity, \$246,000; is that right?

A. That is what is there.

Q. I don't question the accuracy of that, do you, Doctor?

Redirect examination.

By Mr. Jones:

The Raleigh-Durham Airport, that is the grounds, the buildings, etc., are owned by the four units of government, Wake County, Durham County, City of Raleigh, and City of Durham. By an Act of the General Assembly of North Carolina the Raleigh-Durham Airport Authority was created and established. The Raleigh-Durham Airport Authority operates the airport. The Raleigh-Durham Airport Authority is a municipal corporation, makes leases with various airlines and other users of the airport. The city does not, nor does any unit of the government.

Now, the figure of \$246,000 to which I referred awhile ago is the figure that the certified public accountant who made the audit put in as the equity in the land and build-

ings at that airport which the City of Durham owns. The airlines pay for the use of the airport to the Airport Authority at the rates set by the Airport Authority in the agreement with the airlines.

[fol. 193] Recross examination.

By Col. Joyner:

Q. I found one other place I think we can make the matter accurate that we estimated a few minutes ago. I call your attention to Schedule B-1, Page 2. Raleigh-Durham Airport.

A. \$12,500.

Q. Also, just for the record, of course, the City of Durham does not make any contribution to the railroad.

Mr. Burns: Objection; move to strike. Whatever the City of Durham does for Southern Railway is irrelevant.

A. I do not know if they make any contribution.

Redirect examination.

By Mr. Jones:

I feel sure that we would like to get the dividends that the railroad stockholders get. All appropriations which are made by the City of Durham to the Airport Authority are for capital improvements where we have the equity in the property there. They are not for current expenses at all.

Chairman Westcott: I understand from the testimony that these four corporations own all the properties of the airport, and in turn they lease a right to use those, certain of those facilities and derive revenue from the lease.

Witness: Not exactly. I don't think you are correct there. What we do under the Act of the Legislature, an authority is set up, called the Airport Authority. This is a separate authority which administers the airport which leases and which makes contracts.

Examination by Commissioner Eller:

I am not officially representing the City Council. I am not representing any action that they have taken. I came really as a Professor at Duke University to testify to the degree that I used the railroad since January, 1959.

Q. In other words, your testimony relates solely to your personal position; it does not represent any position at Duke?

[fol. 194] A. My position at Duke University and the way I use the railroad.

Examination by Commissioner Worthington:

When I use the trains they are not full. As a usual thing I find from five to ten people, something around there. You see, they get on at Burlington and they get on at Greensboro, but when they go through Durham, I would say there is about five, something like that. That is a casual observation.

Redirect examination.

By Mr. Jones:

It is true that the City Council did authorize and direct the City Attorney to file and intervene here in behalf of the City of Durham and to protest the discontinuance of these trains.

Recross examination.

By Col. Joyner:

I do not remember how the vote was in that City Council meeting. It must have been 100 votes since then and there are 13 there. As I remember the City Council has taken two votes on the question of whether they would oppose this application. The first vote was not to intervene. The second vote was to intervene.

Redirect examination.

By Mr. Jones:

When the matter came up before the City Council there were two men there that requested us not to intervene. One was J. Marshall Spears who is counsel for the Southern Railway Co.

Recross examination.

By Col. Joyner:

At the next meeting, the meeting when the Council changed its position, I just don't remember who was there; I just don't remember.

DR. HAROLD HOTELLING testified as follows:

Direct examination.

By Mr. Brooks:

I live in Chapel Hill. I am Professor of Statistics at the University of North Carolina. I have been at the [fol. 195] University of North Carolina for 13 years. I was connected with the University of Columbia before coming to the University of North Carolina. I am connected with the Department of Statistics and the Institute of Statistics. People from abroad and from these United States come to the University of North Carolina to obtain information and carry on research in statistical theory and methods. The ones who come from foreign countries and from more distant parts of this country seem usually to use the rail service. Whether they come to Durham or come to Raleigh seems to depend on whether I write to them that there does exist rail service on the Southern Railway from New York to Durham. They do not get that information in the Pennsylvania Station in New York nor from travel agents in England, Sweden, France, Italy, Egypt or India. In all these places, one who inquires how to get to Chapel Hill,

North Carolina, seems to be told that the thing to do if coming by train is to go to Raleigh. We who live in Chapel Hill know—at least some of us know that that is an inconvenient procedure. It means traveling about 30 miles or more from the Raleigh railway station to Chapel Hill as against 9 or 10 from the Durham railway station. Unless I take special pains to write very emphatically that they come to Durham, they come to Raleigh.

In my opinion, from the experience that I have had in my department, the railroad service in Durham to and from Durham is needed by people going to and from the University of North Carolina. It seems to be many times there is a great need not only for the maintenance of the service, but it is the improvement and especially for more effective dissemination of information not merely about the time schedules, but also about the relative advantages of this way of getting to Washington, New York and Boston as against others.

[fol. 196] I use the train service to and from Durham to points north and south. I use it for a variety of purposes. Sometimes to go to research conferences, sometimes to go to Europe, and sometimes for personal reasons. It seems to be the general rule that those people whom I contact or write take the rail service to Durham, but those whom I do not contact and advise, they take the rail service to Raleigh. Over the 13 years I have been in Chapel Hill and in touch with the situation, I should say that the considerable majority of people coming to Chapel Hill from foreign countries come by rail. In a great many cases these people from abroad bring their families with them. It depends on how long they plan to stay and how rich they are. It is a bit more expensive to use the airlines. I say that. It is a complicated thing.

A very large joint movement of students at the University of North Carolina, which they call the Caravan, is planning to go by rail to the North Carolina-Maryland game, and they plan to have different cars for different campus organizations. They have arranged to have a special train run. It is by Seaboard. They will embark at Raleigh. They could, of course, get more easily to Dur-

ham. I do not know whether or not the Southern Railway made any effort to get that caravan of students going up to Baltimore for the University of Maryland. I am sure that arrangements could have been made if the railroad had been willing. And the students would have had 25 miles less, or 50 miles less, to ride by automobile if they had taken the train in Durham instead of Raleigh, or something of that order, and they would arrive at the same destination if they had taken the Durham train. I don't know whether or not the Southern Railway was interested in having the students riding the train.

Quite a large proportion of the people who contact my department from 250 or 500 miles from the University of [fol. 197] North Carolina use the train service. Coming from that distance, ordinarily, on the advice of their local station agents and travel agents, they go to Raleigh. After I advise them that they can get to Durham a good many have changed and come to the Durham station. There have been some exceptions. There was one visiting professor from London, England, whom I advised to come by train to Durham, but my voice could not prevail against that of the travel agent in London from whom he bought his ticket who, on information from some source, I don't know what, I suppose, the Seaboard Railway, told him that he must go to Raleigh in order to get to Chapel Hill, and they made him believe there was no other way to do it. In spite of what I had written in favor of Durham.

Cross examination.

By Col. Joyner:

I said it was ten miles from Chapel Hill to Durham. It depends on what part of town you measure from. It is approximately 50 miles from Chapel Hill to Greensboro. There is not now any passenger rail service into Chapel Hill. I understand there was many years ago. Depending on what part of Raleigh you measure from, I think it is approximately 30 miles from the center of the campus.

With reference to whether those people coming from foreign countries would have some desire to go to the

Capital of the State, I think most of those that I have had to do with had no idea where the Capital of the State was until they had been there for some time. It is possible that some boys in Chapel Hill would prefer coming to Raleigh than to Durham. They might prefer going to Greensboro.

Examination by Commissioner Worthington:

When I ride that train it doesn't seem to be overcrowded at all. We get the private rooms. We don't see much of each other. It is hard to estimate how many people ride the train. It seems to have been a diminishing number of people getting off the train. On my most recent trips [fol. 198] when I got off at Durham, I would say approximately only three or four companions; usually more.

DR. JOSEPH J. SPANGLER testified as follows:

Direct examination.

By Mr. Bryson:

My address is 2240 Cranford Road, Durham. I came to Durham in 1932, and, except for during the war period, I have been there ever since. I am in the Economics Department at Duke University. I am Director of Graduate Studies in Economics. My duties as professor of conducting graduate studies in economics takes me out of the city of Durham very frequently, at least that is what my wife says. I have to get out, I suppose, twelve to twenty times a year. In my travels in and out of the City of Durham, I use the Southern from six to twelve times, and some years I suppose maybe 15 times. I was just checking my records, the forecasting records a bit, as some of this testimony was going on, and I have to go to New York on October 16, and New York on November 5, and Philadelphia November 10, and New York November 20, Washington December 8, and I will on the Southern each time. I will go on the train going north that leaves Durham at 7:00 o'clock, and I will come back on the other one.

I use the service because it is superior to any alternative. There are really two reasons for it. The air service is too uncertain. I can't gamble on it. I have got to go up a day ahead of time if I go to Washington; even then I have to go ahead of time because the meeting will start at 9:00 o'clock in the morning, and even if the planes pull out on time, one does not get there soon enough, but if one goes to Philadelphia or New York, the only sure way of getting there is to go there on the train because we have icy weather, we have misty weather and they say the equipment fails on Eastern, and you have no end of trouble but for people in my situation, there is an additional reason. [fol. 199] I can get on the roomette in the Southern at 6:55, or whenever it happens to leave, around then; I can take my books there and I can work to midnight and nobody bothers me, and I can go to bed and I can get up at 6:00 in the morning and get a good meal, when they put the diner on at Baltimore. That is about where you can begin to be fed, at least by my schedule, if you are going to New York, you can get in another couple of hours' work; no disturbance, so you can make your trip without any loss of time. The air service just doesn't compare to them because you lose time going to hotel. Then to get your air limousine, and then maybe it runs, maybe it doesn't. You got somebody sitting next to you. You can't work. They bring you coffee, and they bring you this or that. There is no comparison for a professional man. I think that would be true of a lawyer, too.

I have a very pronounced opinion as to whether the people in the City of Durham and the immediate surrounding area would have adequate transportation, passenger transportation facilities to points north such as Washington, Philadelphia and New York, if these two trains 13 and 16 are discontinued.

My opinion is that they will not have a satisfactory alternative service because the air service isn't satisfactory. It is not certain. We have had a little bit of experience with the Norfolk & Western because the Norfolk & Western used to tie into Lynchburg, and then you could get a train to Chicago or Columbus or Cleveland or Detroit or wherever

you wanted to go when it was running up to Cincinnati or points north. Now, that is off and you got to take a bus and sometimes the connection is unsatisfactory. So you take a plane instead. Well, what happens, sometimes you go to Washington usually for a plane. Although there is a direct connection to Chicago but you run into difficulties, then you run into them coming back, and actually if you can work, as [fol. 200] a professional man it was much easier the old way than it is now and the alternative under the new situation, if we couldn't ride the Southern the comparison is far wider than it was in the first case, the Norfolk & Western case to which I referred. There is no question in my mind, we would be extremely deprived.

I know my colleague, Professor Hoover, makes use of these facilities rather frequently because I know he has to go to meetings here and there, and I know of others. I know rather better about him because he is a near neighbor of mine. I know a good many that do. I couldn't say how many go. I haven't ascertained that but I know that some make use of these facilities.

To the best of my knowledge, the Southern Railway Company does not make any effort to advertise its facilities as far as these trains are concerned to the people in the Duke University faculty and students there on the campus. I am a strong exponent of the capitalistic system, but I think one could do a better job of selling. You take the Eastern Air Lines. They send a representative out every once in a while, saying, "Are you going to be making a trip soon?" I am sure you could sell a good deal of traffic if one put one's back into it.

I do not know whether other public carriers advertise in the community. My only knowledge of my own is that Eastern Air Lines, they send their representative, Mr. Weraer, out periodically. Maybe others also and they see if they can do some business. I don't really know about what the Seaboard does because while I have taken the Seaboard to Florida on an occasion or two, I didn't really have a chance to inspect it. I have taken the Southern to New Orleans on an occasion or two, and I was thinking much more of the trip to the north and east rather than the southern route. So I don't really know except as to Eastern.

I think the service of these two trains is absolutely essential. I think certainly some satisfactory solution could [fol. 201] and should be worked out.

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[fol. 202] WATTS HILL testified as follows:

Direct examination.

By Mr. Bryant:

My name is George Watts Hill, Sr. I have been a resident of Durham for 56 years. I am Chairman of the Board, Durham Bank & Trust Co. I am Chairman of the Board, Home Security Life Insurance Company. I am a former member of the City Council of Durham for eight years. I am Chairman of the Board of Governors for the Research Triangle Institute.

Chairman Westcott: In the record now for the protestants or intervenors, we have Exhibits A through F. Can we designate his as A-1, B-1, etc., to eliminate any confusion as to numbers?

Witness: I have exhibit labeled A-1.

Exhibit A-1 (Identified).

This is the basic brochure entitled "The Research Triangle of North Carolina." As to what the Research Triangle Institute is, reading from the first paragraph on the next to the last page, for your convenience, "The Research Triangle Institute of North Carolina, a nonprofit, public [fol. 203] service corporation," . . . I am skipping several items to get to the fundamentals to save time . . . " . . . was established to provide research services, both applied and fundamental, for industry, military departments, and other agencies of the government." That is the Federal Government.

"The Institute's objective is to develop and maintain a research staff and facilities to render research services in many areas of physical science, engineering, economics and statistics. Other activities related to the overall objectives of the Institute will be added as various programs develop in the future."

On the last page, the second paragraph:

"The Foundation has assisted in the establishment of the Research Triangle Institute, a corporation organized for the purpose of establishing and operating facilities for research in the physical, biological, medical, mathematical, agricultural, economic, and engineering sciences, and the contracting for the conduct of investigation and research in such sciences."

The listing of the Officers, Board of Directors and Executive Committee of the Research Triangle Foundation are listed on the back of the brochure, A-1. That is the Foundation, not the Institute.

Brochure No. B-1 contains maps and data and has a map of Raleigh, Durham and other sections of the Research Triangle on the front page.

Exhibit B-1 (Identified).

This brochure is a recent brochure by the Research Triangle Foundation Office, in Raleigh, published in the Spring of 1959, and contains primarily maps, plus buildings, labor and entertainment facilities data for the benefit of prospective corporations' executives and personnel.

[fol: 204] I have a brochure on Resources for Research in Forestry and Forest Products in the Research Triangle of North Carolina.

Exhibit C-1 (Identified).

That publication was published in 1958 and revised and republished in the Spring of 1959.

I have a brochure on Resources for Research in Electronics in the Research Triangle of North Carolina.

Exhibit D-1 (Identified).

The date of publication of that document is July, 1959, as shown on the last page.

I have a brochure on Resources for Research in Chemistry in the Research Triangle of North Carolina.

Exhibit E-1 (Identified).

The date of publication of that brochure is 1958 and it was republished and revised July, 1959.

I have a brochure on Engineering Resources for Industrial Research in The Research Triangle of North Carolina.

Exhibit F-1 (Identified).

And the date of that brochure is revised publication July, 1959.

I have a brochure entitled "A Full Life in the Research Triangle of North Carolina."

Exhibit G-1 (Identified).

And the date of that publication is published 1958.

Referring specifically to Exhibit B-1, there is a map of the property known as the Research Triangle on page 2 and there is a grey label and number on the side and it folds out. That map shows the location of the City of Raleigh, the location of Chapel Hill, and of Durham. It shows in blue color near the center of the map the property known as the Research Triangle Park.

Q. Now, please state what the Research Triangle Park is as shown on that map?

[fol. 205]. A. As illustrated by the map, I would like to read from A-1, the third page from the back, entitled "The Research Triangle Park." "The Research Triangle Park, about 4,300 acres" (it is now 4,500 acres) "being developed as a campus for laboratories, is at about the midpoint among the three Triangle institutions." Meaning by that, Duke University in Durham, the University of North Carolina at Chapel Hill, and N. C. State College at Raleigh. "From the center of the Park, it is no more than 15 miles to the campus of any one of the three institutions. In addition, the Park is only five miles from the Raleigh-Durham Airport."

And the first paragraph of that section: "The primary function of the Research Triangle Park is to serve as a location for industrial and governmental research facilities which can benefit from associations, formal or informal, with the research community of the Triangle Universities."

The portion of the map designated in blue as the Research Triangle contains approximately 4,500 acres. It is contiguous to a portion of the Southern Railway's line from Durham to Raleigh. The eastern border of the Park is contiguous with the Southern Railroad main line east-west service, and for some 5,000 feet. I call your specific attention to the white area immediately opposite the words "Triangle Park." In that blue section, 80 per cent of that white area has recently been purchased for the account of the Park. So that it is almost a continuous line from the

northern boundary on the east side, down to below the Cornwallis Road and almost to NC 54.

That portion of the Southern shown there as being contiguous to the Research Triangle Park is the same portion of the Southern Railway's line between Raleigh and Durham over which Trains 16 and 13 run.

I have made an effort to condense in a written statement what the Research Triangle Institute is. I have that written [fol. 206] ten statement. I will now read that written statement.

This is a statement by George Watts Hill, Chairman of the Board of the Research Triangle Institute, Board of Governors, and, in passing, I may say this was unanimously approved. The petition of intervention was unanimously approved by the Executive Committee of the Research Institute, and I was requested on behalf of the Institute to make this statement.

I, George Watts Hill, affirm that I am the Chairman of the Board of Governors of the Research Triangle Institute, a non-profit organization incorporated December 29, 1958, under the laws of the State of North Carolina; that I am the official representative of that organization, acting with the full approval of its Executive Committee.

The Research Triangle Institute is now occupying 10,000 square feet of temporary quarters in 505 West Chapel Hill Street, Durham, and will move its office to the Research Triangle Park as soon as the Hanes Memorial Building is completed in the fall of 1960. The Institute also has under lease at 807 Bacon Street, East Durham, as close as we could get toward the park, a 10,000 square foot building for the conducting of laboratory Research. And where RTI appears, it stands for Research Triangle Institute. The building houses RTI Isotopes Development Laboratory.

The Institute has a staff of 44 employees actively conducting contract research. Contracts for research have been received in an amount approaching a total of \$500,000 in the fields of nuclear energy, statistics, and operational science.

Institute progress to date indicates that the Research Triangle might well become a major center of industrial and government laboratories. As a matter of fact, the Tri-

angle is now a center of research, as the three university [fol. 207] units are budgeting over seven million dollars per year for research. The expected growth of the Research Triangle Institute can best be stated in terms of the history of similar organizations elsewhere in the United States. Other non-profit research institutes range in size from approximately 275 employees to over 2,000. After only seven months of active operations, the Institute has obtained a size not reached by some of the older organizations until their second year of activity. Research volume projected for 1965 is \$6,000,000 and for 1970 is \$12,000,000. It is anticipated that the staff of the Institute will number 500 in 1965 and perhaps 1,500 in ten years.

The Research Triangle Institute plans to expand into new areas of chemistry, physics and engineering. The Institute is designed to serve as a focal point in attracting industrial research laboratories to the Research Triangle Park and the Triangle Area, as well as throughout the State of North Carolina, meaning the area encompassed, the triangle composed of Raleigh, Durham and Chapel Hill. The fact that The Chemstrand Corporation, one of the major manufacturers of synthetic fibers in the country, has purchased 100 acres in the 4,500-acre Research Triangle Park and is beginning the construction of a major basic research laboratory employing a large number of scientific personnel confirms this statement. Construction began Monday, October 5, sir.

The Research Triangle Institute will be located on a 250-acre Institute campus in the heart of the Research Triangle Park. As indirect result of the then planned organization of the Institute and its plan to move into the Research Triangle Park, the Astra Corporation, a group of nuclear engineers, moved from Connecticut in July, 1958, to temporary quarters in Raleigh until a facility is available for their occupancy within the Park. ECSCO Corporation of California has made commitments in that it will shortly open [fol. 208] an eastern office in the Park to continue their engineering studies on certain types of electronic and missile support equipment.

It is to be expected that numerous scientifically oriented industrial facilities will be established in and adjacent to the Research Triangle area in order that the staff of these

industrial research laboratories might use the scientific research facilities available through the Institute and the three cooperating University units: Duke University in Durham, University of North Carolina at Chapel Hill, and N. C. State College in Raleigh. This has been the history of the tremendous concentration of research and industrial facilities in the Boston area in close proximity to Harvard University and Massachusetts Institute of Technology. So, in Northern California, one finds an extensive concentration around Stanford University and the Standard Research Institute. 3,200 acres of the Research Triangle Park have been reserved for the exclusive use of research laboratories and supporting facilities. This means that there will be no manufacturing within that portion of the Research Triangle Park. Evidence indicates that many manufacturing plants will locate in the neighborhood of the cities of the Triangle close to the Research Triangle Park and the Research Triangle Institute.

This potential industrial expansion, while materially adding to the freight revenues of all railroads serving the Triangle area, should also materially add to the potential passenger traffic from this area. The Southern Railway should receive the greatest benefit from this potential as the Southern Railway is now furnishing the only passenger service to and from Durham, the nearest passenger station to the Research Triangle Institute.

The Southern Railway Company's petition to abandon passenger service east of Greensboro should not be considered solely on the basis of past experience nor on the basis of revenues and expenses directly applicable to that particular segment of Southern's total operations. Rather, it should be recognized that the subject service constitutes part of the total transportation network serving the Research Triangle area. Coupled with such other facets as cultural and educational environment, recreational facilities, and good communities, good transportation of all types is an asset which will contribute to creation of a major national center of research facilities in the Research Triangle in future months and years.

The Research Triangle program was undertaken with confidence that the establishment of industrial and govern-

ment research facilities in this immediate area would stimulate the expansion of production, service, and distribution facilities throughout the entire State and region, thereby accelerating the expansion of the economy upon which Southern is dependent for a large share of its freight revenues.

The State of North Carolina's confidence in the benefits to be derived from this program has been demonstrated by the action of the General Assembly in 1959 in appropriating a grant in aid of \$200,000 to the Research Triangle Institute for purchase of fixed and movable equipment.

Even considered in terms of the limited Research Triangle area, Southern Railway's desire to abdicate any rights to participate in the passenger business would appear to be ill advised at a time when the area is beginning to experience an era of economic expansion which may well be unprecedented in the history of our State. Certainly the growth of the Research Triangle Institute, establishment of new research laboratories of industry and government, and growth of the area's educational institutions will multiply many fold the passenger revenues potentially available to all types of public carriers serving this area.

[fol. 210] With roughly comparable rate schedules, adoption of efforts to improve service and aggressive promotion, Southern Railway should be in a position to capture a greater percentage of the medium-distance, or overnight range, passenger traffic than it now enjoys. Such efforts made at a time when total business travel from the Research Triangle area is on the threshold of accelerated growth, cannot help but result in increased passenger revenues.

A substantial portion of staff travel, that is staff of the Research Triangle Institute, involves trips to Washington, Philadelphia, and New York. The Institute staff has been using Southern Railway's overnight Pullman service on some of these trips. Improved service and convenience would result in increased use of this route as the Institute's staff continues to grow. The Research Triangle Institute assumes that other laboratories locating in the Park will have similar transportation requirements. The proposed abandonment of Southern Railway's passenger service from

the Research Triangle would inconvenience such laboratories and would ignore the passenger potential which can be attracted by good service and convenient schedules.

Attached to this statement and requested to be made exhibits thereto are the following:

Exhibit A-1:

Basic Triangle Brochure, revised July, 1959, "The Research Triangle of North Carolina";

Exhibit B-1:

"The Research Triangle, North Carolina—Maps, Data (See Location Map, page 2, published 1959)";

Exhibit C-1:

Brochure entitled "An Invitation to Investigate Resources for Research in Forestry and Forest Products in the Research Triangle of North Carolina," revised Spring, 1959.

[fol. 211] Exhibit D-1:

Brochure entitled "An Invitation to Investigate Resources for Research in Electronics in the Research Triangle of North Carolina," July, 1959. (Note reference to train service on next to last page under the heading "Accessibility.")

Exhibit E-1:

Brochure entitled "Resources for Research in Chemistry," published 1958.

Exhibit F-1:

Brochure entitled "Engineering Resources for Industrial Research in the Research Triangle of North Carolina," published 1958. (Note on eleventh page under "Transportation" references to railroads.)

Exhibit G-1:

Brochure entitled "A Full Life in the Research Triangle of North Carolina," published 1958. (Note reference to railroads under heading "Transportation" on page 25.)

GEORGE WATTS HILL, Chairman Board of Governors.

Q. Mr. Hill, have you made an investigation to determine the amount of travel expense for members of the RTI for the month of August, 1959? And, if so, can you give us that figure?

A. I have a report in front of me, dated October 8, from Mr. S. C. Ashton, Administrator, of the Research Triangle Institute.

Mr. George Watts Hill
Chairman of the Board of Governors
Research Triangle Institute
Durham, North Carolina

Dear Mr. Hill:

The following is a breakdown of money spent in travel from the start of our books ...

Beginning the first of January through August 31, 1959; Total travel including subsistence and tickets for air travel, rail, and car—\$13,211.99. Total travel ticket money paid [fol. 212] to air lines—\$4,003.24. Total train tickets purchased—\$367.62.

It is difficult with our system of books to break out all car transportation. However, quick appraisal indicates \$2,000 to \$3,000 of the \$13,200 as being paid for mileage allowance.

It is my opinion that in the winter months with the uncertainties of air travel, rail travel will increase.

Our books clearly indicate that travel and subsistence payments are increasing in a straight line function with the number of staff, having gone from \$429.10 in January to \$5,540.17 in August, 1959.

Very truly yours,

S. C. Ashton
Administrator.

That is the conformation of the statement.

Col. Joyner: I am not asking the witness a question, but if it is possible when he returns tomorrow, I would request that he ask for a breakdown of the total train

tickets purchased to show how many of those were on the trains in question and how many were on other trains.

By Mr. Bryant:

Q. Do you know whether that would show that, Mr. Hill?

A. My request was for train traffic. I will check that.

Q. Check it to see if you can furnish Col. Joyner the information he now requests.

A. That is the \$429.10 item.

Col. Joyner: That is the \$367.00 item.

Chairman Wescott: Your question, Col. Joyner, is what part of that applies to Trains 13 and 16?

Col. Joyner: Yes, sir.

Witness: I may state that the majority of travel, almost all the travel originates in Durham and goes to Washington, Philadelphia and New York because it is impossible to get to Oak Ridge or to Huntsville, Alabama, by train with any reasonable time limit.

[fol. 213] Temporarily the present headquarters of the Institute are at Durham, until the building is constructed.

I have said that there were three companies, being the Research Triangle, the Pinelands Company, and the Research Foundation. The Pinelands Company owns the Research Triangle Park. The total stock of the Pinelands Company is owned by the Foundation. The Foundation was financed by contributory campaign in the fall of 1958, when pledges were received of \$1,500,000. Those pledges were solicited and received from 97, I believe it is, contributors throughout the State and some out of State corporations doing business in the State. The Southern Railway Company was given an opportunity to contribute but declined.

In connection with expenditures made by the Southern Railway Company in this area in promoting the industrial development of the area I know of no advertisements. I have had limited contact and know of limited contact by the Southern industrial agents active out of the Charlotte office. I know of no expenditures in the area between Greensboro and Goldsboro that I can pinpoint. The brochures that I made reference to yesterday do contain refer-

ence to rail passenger service. The big brochure known as B-1 has no reference to rail passenger service. The following brochures are prepared for professional people. I am speaking of B-1. B-1 has a map containing the location of the railroad. It has no written material referring to rail passenger service.

The following five, I believe it is, brochures, four brochures written for professional scientific people, primarily concerned with the facilities available in the Universities and the area for scientific work. C-1 on forestry does not mention passenger trains because very few forestry people, it has been our experience, have any concern. They are primarily located within the State and tend to remain in [fol. 214] the State to a greater degree than other types of professional people. Brochure No. D-1, Electronics, on page 7, that is the next to the last page, states under the major heading "The Community, Accessibility," reads as follows: "Two main North-South railroads serve the Triangle, with excellent overnight transportation to Washington and New York." Then it makes the comment about the Raleigh-Durham Airport. Brochure E-1 on the Sources for Research in Chemistry makes no mention.

Brochure F-1, Engineering Resources for Industrial Research, on page 11, under Transportation, that is about five or six pages from the back, "A Place for Living," makes the similar statement under Transportation. "Two main north-south railroads serve the Research Triangle with excellent overnight transportation to Washington and New York. Located on the main line of these railroads, there are several trains daily." And the final brochure, Exhibit G-1, which was written for the wives of potential people interested in the program, on page 25, which is towards the rear, there is a nice plug for the Southern, under the heading "Transportation." "Two major passenger railroads and three airlines serve the people and industry of the Research Triangle." "Fast and comfortable Southern and Seaboard Air Line Railroad trains travel overnight from Raleigh and Durham northward and southward, to New York, Washington, Atlanta, and Miami."

Of course, the Southern Railroad is shown, as mentioned yesterday, along the eastern boundary of the Research Tri-

angle Park. At some point I would like to comment on an opinion of the value of the passenger service to Research Triangle Institute. I have been active in soliciting industries in this area for the past three or three and a half years. Concerning my solicitation of industries, report has always been made to conferences that have been held in Chapel Hill, in Raleigh and in Durham with key executives [fol. 215] of national corporations which appear to be interested and stated they were interested in locating in this area, studying the situation and also possibly building research laboratories in the area. They have always asked the question of our passenger service primarily to Washington, Philadelphia and New York because many of them have their home offices in New York and quite a number of the men, such as General So-and-So, Vice President of Research in So-and-So, state that they do not like to fly and they prefer to take the train and like through overnight service.

As to whether rail passenger service is an important factor in the location of industry in this section, I think personally, and speaking also on behalf of the Institute, it was at their request that I so state, that it is a convenience and a necessity to the Research Triangle Institute activity. Without it, there would be a real problem. With it, everyone has taken for granted that it would continue, and it is a service that we think has a very definite effect on the future potential development of the Research Triangle Institute and many of the companies that would be attracted, we hope, to the Research Park in the area because of the Institute.

There was no objection raised by the public, to my knowledge, to the elimination of the two prior trains that went each way, two trips per day, but if the last service is eliminated, it makes a very difficult situation. The question might be posed that people have not complained about lack of service. That question has never arisen because the service was available and no one thought of it being removed until recently.

This particular area in this program has been approved as a Federal Aid program. The major roads within the Re-

search Triangle Park were recently placed on the Federal Aid Program which means that the Federal Bureau of High- [fol. 216] ways of the Federal Government will contribute 50% towards the cost of their construction, thus relieving the State and the Triangle program of that expenditure. I have a map indicating that.

As to an estimate of the number of people who will be employed in this particular area, Voorhees, Walker, Smith & Smith, the original planning consultants from New York, estimated that the Park was capable of handling 35,000 employees. The Park at that time was only 3,900 acres. Now it is 4,500 acres. They also advised, and this is the general rule of thumb of planners, that you multiply an employee by four to five persons to give effect to wives, children, service people, etc. Thirty-five times four is 140,000 within Raleigh, Durham and Chapel Hill.

As to whether the growth of this program would have any effect upon the freight, express and passenger service, it would appear that Durham and Raleigh together are slightly more, I believe, than that potential figure, so it would appear logical to estimate that the passenger and rail traffic should almost be double.

I have lived in Durham over fifty years. The present population of the City of Durham is approximately 85,000 to 90,000. There are six banks in Durham. One major bank merged several years ago and another merged September 1 with a State-wide chain; the former merger was a State-wide chain. Another bank is in process of merger with a Southwestern chain. I am in the process of merging two local banks.

Durham is considered the outstanding medical center of the Southeast from Baltimore, including Florida, and it is considered better than the area of Tulane University. As a university center it is one of the outstanding centers because of the prominence academically speaking of Duke University, the University of North Carolina, and State College.

[fol. 217] As to my use of the passenger rail service on these Trains 13 and 16, I used to use it a great deal. I have a peculiar situation in that I live some 15 miles north

of Durham. I used to drive to Danville and take the train, when I had the chance to go home, have supper. When that was not practical, I took the train to Greensboro, the New York Pullman out of Durham and back. I have not used it much in the past few years due to the inconvenience of transportation, etc. I am unable to use it coming back from Washington as I would like to use it without spending the night. I can take the Seaboard at 5:00 in the afternoon and be in Raleigh at 10:00 at night. I have used the train twice since the first of January of this year.

I got on the train sometime in the early spring, in New York, after being told in New York at the Pennsylvania Station ticket office that there were no spaces available. I couldn't believe it. I got on the train and found some six or eight berths available and had no problem coming back. That was in the Durham car. I wouldn't be concerned with any other car.

I have a personal opinion, relating not only to the Research Triangle but to the Durham community as a whole, as to whether the retention of these two trains, 13 and 16, by the Southern Railway is necessary for the public convenience and is a matter of necessity for the public of that area. The continuance of these two trains, in my opinion, from Durham to Washington and New York, is a matter of great convenience to me and the general public; and I think it is necessary for the proper development of the community. Without the facility, we fail to have, if nothing else, a standby facility in case of bad weather or people who normally fly. I have been stopped many times by planes being broken down or over weather. Quite a number of people do not like to fly and prefer to go by train, and that facility should be available to them. It is rather impractical [fol. 218] to go to Raleigh, leave your car, or have someone else bring it back, or go to Greensboro. It is impractical for other people to go to Danville. And I feel it is to the best interest of potential hospital patients, the University personnel to have the facility available. I have given it as my opinion that the retention of these trains is a matter not only of public convenience but of necessity to the Durham area.

I have read the portion of Mr. Belfield's testimony that he gave in written question and answer form. I have certain comments on Mr. Belfield's testimony. First, he hadn't done his research well, possibly as he should, because he only told part of the story about the brochures, meaning passenger transportation. He only noted one that failed to mention. He did not note the three that did.

On page 6 of that statement, question was posed: "Q. Have any of the industries that have located in the area now under discussion shown, to your knowledge, a need for rail passenger service?" That is to Mr. Belfield's knowledge. I would like to comment that I doubt seriously if the question of need arose as the service was available and expected to continue. That has been the situation. I doubt seriously if a question of need would arise until there was some question about it. He also made the answer to the question on page 6, "Q. Do you personally know of any industry that has been lost to this area because of a lack of rail passenger service, or the possibility that the operation of these two passenger trains would be discontinued?" He stated, "A. I know of no such industry."

Well, I doubt if he would, and I doubt if I would, because common practice has been by corporations if they fail to locate in a particular industry, they seldom tell you why. They fold their tents and quietly fade away. That has [fol. 219] happened too many times. He posed the question: "Q. Southern has discontinued two pairs of passenger trains on the Greensboro-Goldsboro line—Nos. 21 and 22—in September, 1954, and Nos. 111 and 112 in April, 1958. Have new industries located on this line despite the discontinuance of these trains?" I would like to comment that I know of no opposition by the public or any individual to the elimination of those two trains. Also, he lists in continuing answer on page 7 to that question, he lists certain companies that have located in Burlington, Raleigh, Durham, etc. I would comment that I do not think the Raleigh companies are pertinent to the question because they have main-line Seaboard Service, and to the best of my knowledge, the two Durham companies are not concerned especially with that type of service. Wright Homes is on the

Durham and Southern Railway, for one thing, and they are local.

As to Mr. Belfield's statement, "If industrialists find that a community insists on the continued operation of services which are not needed, they, in my opinion, become somewhat suspicious of the progressiveness of such a community." I would reverse his statement. My personal opinion would be that his approach is a new approach. I personally would become suspicious of the railroad for not promoting their service in giving better service. I would become suspicious of the railroad, not of the community, because it appears to me that the railroad has done almost everything in their power to eliminate the railroad by various and sundry means, eliminate the passenger service, not the railroad.

They are trying to kill off the passenger service for years, is the impression they give. Eastern Air Lines promotes and advertises. Southern Railroad, I have never seen an advertisement of this passenger service.

In addition, I would like merely to say that corporation executives with whom I have talked have expressed themselves as pleased that the passenger service to New York was available. The question has never been raised with them as to its discontinuance.

Cross examination.

By Col. Joyner:

I was unable this morning to break down the train travel tickets purchased in the amount of \$367.62 to find out how much of that was by Southern. But I will get it done today for you. That amount includes passenger service that is spent either on the Southern train out of Durham or by travel out of Raleigh by Seaboard.

I read Mr. Belfield's written statement. Mr. Belfield made a very nice plug for the Triangle Program in his statement. But the Southern Railway people failed to cooperate with the Park in their efforts to obtain around 190 acres of land adjacent on both sides of the Southern Railroad as a part of the Park. They were not going to acquire that land for

present railroad purposes, from my information they had not given it any consideration. It had been lying there vacant for many years.

First I went to them, talked with various Southern Railroad executives in Washington and talked to Mr. DeButts over the telephone and he declined to make the donation. So I went back, after Archie Davis, the Chairman of the Board of Wachovia Bank, and President of the Research Triangle Foundation, and Bob Hanes, Director of Southern Railway, had discussed the matter with Mr. DeButts and he had declined. I went back to them, and so did Mr. Davis, to see Mr. DeButts and requested that they buy the land and then turn it over to the Pinelands Park Company for development as a part of the Park, the cost of this land to be refunded. Mr. DeButts stated he was only interested in freight. Mr. DeButts stated to me by telephone that he was only interested in freight and they could not buy the land and turn it over to us, even on a refund basis. I have made no inquiry as to whether the Interstate Commerce Commission or this Commission would approve of such an [fol. 221] expenditure for a railroad for a contribution of this kind, but Norfolk Southern made a donation, and Durham & Southern made a donation to the Research Triangle Foundation program. Only three railroads in the Park area are reasonably adjacent. Southern Railroad is on the eastern boundary, the Durham & Southern touches the western boundary, the Norfolk Southern is immediately west but does not join. Seaboard and Norfolk & Western come in from north but they do not come into the southern part of the community which is the location of the Park.

The Durham & Southern Railroad is 44 miles in length, I believe. I believe it operates solely within the State of North Carolina. I understand the Norfolk Southern operates from Charlotte to Raleigh to Durham to Norfolk. I do not know where else. I have no reason to doubt that the only operation of the Norfolk Southern out of the State of North Carolina is from the North Carolina line to Norfolk. It is possible that there would be a different problem posed to railroads which operate in many States than the problem posed to railroads that operate only in the State of North Carolina with reference to justification of a contribution

to the Research Triangle. I don't know whether there would be a difference.

I stated that I am Chairman of the Board of the Durham Bank & Trust Company. I have been an officer of that bank for many years. I was originally President of that bank for a few years. We have a trust department in that bank. For many years the trust department has been engaged in the investment of funds in trust accounts in stocks and bonds of various enterprises. To a more or less degree it has been necessary for a man who is in the banking and investment business to become familiar with investment problems, and to some degree to become familiar with financial statements and interpretation of financial statements. [fol. 222] I understand it is a fact that the financial statements of railroads are very widely published; they are filed with the Utilities Commission; they are furnished to brokers and they are practically public property. Whether the amount of the net operating income of a corporation has significance to its prosperity only if there is also considered the value of the property devoted to the earnings of that income, all depends. Generally speaking, the investment public is interested in the return on the investment, a reasonable return. Whether a corporation that had a \$37,000,000 operating income and total plant devoted to the earning of that income of \$100,000,000 would be a highly successful and profitable enterprise again would all depend on what hidden assets, hidden liabilities, what potential for the future, what their past earnings had been, etc. It would also depend on management. Assuming no abnormal circumstances a company with a plant value of \$100,000,000 making a net income of \$37,000,000 would be a highly successful year if it were continuing; no depletion of assets; if it were continuing normal expectancy and no depleting assets. Assuming that you have a corporation with a plant value of ten billion dollars and it earns \$37,000,000, I say that a few zeros in the right place make quite a difference. Using just those figures, that would be a very bad year and a gloomy year for that corporation. In considering the affluence of the Southern Railway Company, when you get information that its earned net railway operating

income for the year 1958 was \$37,000,000, you would want to know what is the plant value that earned that income if you were an expert in railroads. I am not.

I don't consider myself an expert financier.

As a banker in charge of the investment of the funds of my bank, if I were asked to invest in the stock of a corporation and were furnished only with the statement that they earned \$37,000,000 last year, I would inquire into a great [fol. 223] many other things besides the value of the plant. The value of the plant would be one of the parts of the inquiry. I would also want to know how much water there was in the stock and whether the figures are book figures, whether they are actual figures, appraisals and I would like to know a great many questions about it. Referring to the report of the Southern Railway Company to the Interstate Commerce Commission, year ending December 31, 1958, Annual Report Form A, on page 300, page entitled "Income Account for the Year," at line 25, I find net railway operating income, line 7, 24, \$37,476,162. I take it that means the current year 1958.

Turning to page 230 of that Report, the last line, line 50, under the column "Investment in Property," shows investment in property of \$837,761,000. The column head of the next to the last line reads "Depreciation and Amortization of Defense Projects," in the amount of \$146,761,000. Subtracting the amount of the depreciation from the amount of the gross investment figure leaves a net of approximately \$691,000,000, with a net income of \$37,476,000 and a net investment of property of \$691,000,000, the rate of return comes out at 5% plus.

On page 200 of the Report the first two lines under the head "Current Assets" shows line 1, "Cash at the Close of the Year" of \$20,154,000; line 2 shows "Temporary Cash Investment" of \$40,000,000, and line 12 shows "Materials and Supplies" of \$7,269,000. I will accept subject to check that the first figure that I testified to, the Investment in Property, does not include the cash or materials and supplies. As to whether I consider a rate of return of 5.42% on an investment of more than 600 million dollars a fair rate of return, I would say that in the case of a railroad this was an extremely good return, especially with the po-

tential for development that they have at the present time and have had for the last five or ten years, which is [fol. 224] far better than any railroad I know of.

It is my understanding that within the last twenty years the value of the dollar has greatly declined. And that in many instances it would cost more now to replace property that was put in service, say five or even ten years ago, than it cost originally. Assuming that the fair value of the railroad plant of the Southern Railroad devoted to the public service was 20% in excess of the net investment in property and taking the \$691,000,000 and increasing it by 20%, the rate of return would be 4.9%. As to whether 4.9% rate of return is a fair return on railroad property devoted to the service of customers again depends on many variables. It is not as good as five. I am not familiar with commission and court determinations of fair rates of return for railroads. We have very limited railroad stock in our bank portfolio. We have C&O and N&W railroad stocks, I believe, for our type of investment purposes. I don't regard railroad stocks as attractive investments for our particular type. Our customers wanted other types of stock. I think our only investment in railroad stock is in C&O and N&W. I am reaching way back in my memory on that.

I live 15 miles north of Durham the majority of the time. Eight months in the year I live there and four months in Chapel Hill. I come to my office five days a week. I ride in in the morning and ride back at night. I regard driving an automobile 15 miles as one of those necessities in life that I cannot skip and that is why I am moving to Chapel Hill. I drive from Chapel Hill to Durham but that is much less distance. That is approximately nine miles to my house instead of 15.

As best I can remember, I have used this train twice since January. I have no record of that. I went up to New York and I came back that one trip. I went up and, the other trip, I came back by train on Seaboard. I frankly [fol. 225] don't remember. I think I went up twice and came back once. During that period I have been up on the airplane quite a number of times because my work calls

for sudden trips to New York and Washington. When I go by air, I drive to the airport, leave the car, and it is a 15- or 20-minute drive. Also limousine service is available, which I use at times. On the occasions when I rode in the Southern Pullman between Durham and Greensboro, I do not recall how many persons got on with me at Durham. I think that there was possibly one that got on at Durham. When I came back, several passengers got off. To the best of my memory I did not use the train at all during 1958. Mrs. Hill and I used to ride the train a great deal back in the early '50's, on up until she broke her hip.

I do a lot of travel for the Research Triangle. I generally use the airplane, I drove several times through necessity.

I do not have any special complaint about the type of Pullman car that I got in when I traveled in January.

The only occasion for the sale of tickets out of Durham to the north would be for the afternoon train, 6:55. With the amount of travel that has been experienced in the past year, I would not think it would be justifiable to employ another ticket agent. I have no particular opinion about that.

As to what I would recommend as to improved service and as to whether I would recommend the employment of additional persons to sell tickets, it depends altogether on the potential use of the train and the potential demand. This presents some problem to some people. When I have called the train station myself I have usually found the phone busy or the phone failed to answer, and I have been in the habit several years ago of always trying to get my reservations four, five days in advance because of the fundamental problem of getting through to the ticket office [fol. 226] which is removed three or four blocks from my office. This would seem perfectly reasonable with the number of passengers you now have. This would seem reasonable based on the number of passengers that you have at the present time.

Q. Well, what I am trying to get at, Mr. Hill, say, starting tomorrow, if you were in charge of that operation, would you think it justifiable to employ an additional ticket agent?

A. That all depends, sir.

Q. With the information you now have, you have been quite free to testify as to the defect in the service, and I am trying to find out what you would do now to improve this service with respect to delays in getting tickets or the telephone being busy. Would you employ a ticket agent?

A. It depends on how much interest I had in that particular railroad service. Ticket sales is one of the component parts only and is an essential part, but there are other aspects of it. There are other aspects that I would pay special attention to.

Q. Well, I am trying to get your reaction, Mr. Hill.

A. I am not trying to be evasive.

Q. I am trying to get a reaction not as an enthusiast for the Triangle Park.

A. I think the community deserves good service.

Q. But I am trying to get your opinion as a businessman. Would you think it is sound business to employ another ticket agent?

A. Well, as Mr. DeButts has said to me, what would you do if you had a branch bank that is losing money? Wouldn't you get rid of it? I said, I would get out and work like thunder to promote that bank and get it on a paying basis. I believe in taking a positive rather than a negative approach.

[fol. 227] Q. I was going to get to the field of promotion. I am trying to cover the field of service.

A. Ticket sales is a part of promotion.

On the present schedule it would be silly to install a diner on that train tomorrow. I think you might have some food facility available either in the station or on the train.

Q. Did you hear the testimony that the commercial operator of the station closed even though the rent was reduced to \$2.50 a month?

A. Well, I gave space to people in my building just for the service, operated at a loss.

With my knowledge of the number of passengers leaving Durham on that train, I think that it would be reasonable to incur the expense of providing eating facilities at the station, either lunch counter or lunch stand.

Q. Now, in the field of promotion—

A. But you are only covering a portion of the picture when you specify certain things. It is an overall picture.

Q. I am trying to find out as a businessman what you would recommend be done with respect to that service. Those that I have omitted that you think are important, please mention them.

A. Go right ahead, sir.

I have not made any study of trends over a number of years of the loss of passenger business by the railroads in the United States.

Q. Have you made any study of the efforts that the railroads made by reason of advertising, putting on trains, reducing fares, to prevent the passenger business actually declining?

A. I have seen newspapers and other advertisements to that effect, sir.

Q. And you know that as a fact, do you not, that the passenger business of railroads has declined notwithstanding the great increase in population, notwithstanding the greater activity in business, and notwithstanding such promotional efforts as the railroads may have made?

[fol. 228] A. I understand there has been a decline in places, yes.

Redirect examination.

By Mr. Bryant:

I am not familiar with any promotional activities by the railroad as far as the passenger service on this Goldsboro-Greensboro run is concerned. I don't remember seeing anything.

Redirect examination.

By Mr. Burns:

As an investor and looking at the stock I understand the percentage of dividends paid over a number of years is one of the criteria. Another criterion would be the relative safety of the investment.

If I knew of a company that had in recent years a two for one stock-split and had a $2\frac{1}{2}$ for one stock-split and during that same period it had paid adjusted dividend per share of 60¢ per share in 1950; 80¢ per sh. 1951; 80¢ per sh. in 1953; \$1.40 in 1954; \$1.60 in 1955; \$2.50 in 1956; \$2.80 in 1957; \$2.80 in 1958, and for the first eight months in 1959 the company had earnings per share of \$2.85, I would say that that was evidence of a definite improvement in position. I would have to know a great deal more before I could say whether that was evidence of a financially sound investment. It would be interesting to say the least. It might be an attractive stock. It would be sufficient to attract one's interest to investigate further.

Further cross examination.

By Col. Joyner:

The accumulation of surplus is normally out of retained earnings and/or the sale or liquidation of capital assets. If there are no sales of capital assets, it would be retained earnings, and when there are earnings, they would be earnings that are available for dividends normally, net earnings normally available for dividends. And when they are put into surplus rather than paid out to the stockholders, that represents in substance an additional investment of money by the existing stockholders in the plant equipment of [fol. 229] the corporation as long as it remains there.

Q. Don't you know that as a fact that many, many years Southern Railway didn't pay any dividend at all?

A. I understood they had some problems. I don't know the dividend record.

I know that in railroads, generally, the money that has been acquired for the purchase of new equipment, the improvement of roadbeds, the improvement of rail service generally has been acquired by stockholders' money retained from earnings and the sale of bonds and stocks.

Q. How about sale of stock? Do you know of any railroad of a substantial size operating in more than one State in the last ten years that has attempted to float a common stock issue?

A. I am not familiar with railroad investments. I am sorry.

Examination by Commissioner Long:

When I was examined by Mr. Burns I assumed a corporation with a certain dividend record and I said in effect that would arouse my interest. If upon further checking I found that that stock was in a company which was a number of industries, most of whose members were in receivership during the most recent depression, that would very definitely have some breaking effect on my interest in those shares. But just because one particular company of an industry, whether it is railroads, chemicals, or what not, I would be more interested in the specific business, the management especially of that business than its potential.

Q. And this would cause you to focus your attention more on the other circumstances other than particular earnings at this time than it would to current earnings, would it not?

A. I think especially so in the case of the Southern because of my very general knowledge only of what is known [fol. 230] as what do you call it—the Crescent, the area from Raleigh-Durham on down to Greensboro, Charlotte, Spartanburg, Southern Crescent—which has tremendous potential. I am not speaking of the train but of the area.

So earnings would only be one of many important factors that I would consider in deciding to invest in any issue in railroads.

CARL R. HARRIS testified as follows:

Direct examination.

By Mr. Bryant:

I live in Durham. I am connected with the Erwin Mills, I am Vice President. I have been connected with Erwin Mills for approximately thirty years. I am President of the Durham Chamber of Commerce this year. At the direction

of my Board I have signed an intervention for the Durham Chamber of Commerce in this matter.

I have lived in Durham for thirty years. I think that I am reasonably well familiar with the business and economic and industrial life of Durham as well as the cultural and medical aspects of the community.

In preparation for giving testimony to this Commission I have made an investigation of a number of Durham manufacturers located in or in the vicinity of Durham over the period of 1940, 1950 and 1958. In 1940 there were 96 manufacturers in Durham. In 1950 there were 107. In 1958 there were 124. Projecting that on the average yearly increase that has prevailed over the period from 1940 to 1958 I estimate that in 1956 there will be 138 manufacturers in Durham.

I have made an investigation as to the number of persons employed in these manufacturing plants in Durham. I would like to explain that. This figure that I give only covers those employees who are covered by social security and report to the Social Security Commission. It does not include employees of such as Duke University and several [fol. 231] other large institutions of that kind. For 1940 the number was 19,483. For 1950 it was 24,433, and for 1958 it was 26,414. My estimate for 1965, based on the same rate of growth, is 30,100.

The population of Durham County in 1930 was 67,196; in 1940 it was 80,244; in 1950 it was 101,639; in 1959 it is 118,000. The figure for 1959 is arrived at by a projection upon the same rate of growth as prevailed during the base period. That rate of growth is 2.61% per year. On the same basis the estimate for 1965 would be 136,479.

In the year 1940, for the City and County of Durham combined, there were 35,912 dwelling units; in 1950 there were 46,404; in 1958 there were 53,300. The estimated figure for 1965 is 63,574.

The postal receipts for 1950 amounted to \$777,250. That figure for 1958 was \$1,183,755. These figures were obtained from the Post Office Department. The estimate for 1965, projected on the same rate of growth, is \$1,725,678.

The amount of retail sales for Durham County for 1950 is \$93,579,000. The figure for 1955 is \$111,625,000. The

source of that figure is "Sales Management," which is taken to be a reliable retail sales reporter. Retail sales for Durham County for 1958 amount to \$119,936,000. The projected estimate for 1965 would be \$149,000,000 approximately. That projection is made on the basis of the same rate of growth as the population. I think that that basis of projection is ultra-conservative. There is no question about that.

The total student enrollment for Duke, Carolina, and N. C. State College for 1951 was 13,315. For 1958-1959 it was 14,737. That information is direct from the institutions.

I have information of the development of companies and expansion of companies in the Durham area since 1956. [fol. 232] There are some expansions and some new additions and some new companies entirely. It is just a great variety of different types of companies which have either expanded or located in Durham. The principal and largest that is in the course of coming there is the Chemstrand Corporation Laboratory. The outstanding one which has developed in Durham since 1956 would be Chemstrand. The Home Security Life Insurance Building would be probably the second largest. The cost of that expansion was \$2,000,000. And there are four shopping centers already in operation or close to it in Durham and another being projected at this time, running into quite large expenditure. Liggett & Myers is in the course of adding a multimillion dollar addition to their research laboratory at this time. I have not included in my testimony anything about the Research Triangle.

As to whether there will be any increase in the growth of Durham in the immediate vicinity in the next few years as far as population and industries are concerned, the figures and estimates that I have given here so far are based entirely on past experience. With the advent of Chemstrand and the Research Triangle getting into full swing, it would be very difficult to make anything like an accurate estimate, but certainly I think that we can look forward to many times the rate of growth that we have experienced during the past years, and it will be illogical not to consider that as being the case.

There have been recent bank mergers in Durham, either completed or pending. The Wachovia Bank and Trust Company of Winston-Salem merged with the Fidelity Bank, which, I believe, was in September, 1956. The Security National Bank of Greensboro has merged with the Depositors National Bank of Durham, which was just recently in the last few weeks announced. The Durham Bank & Trust Company has, I believe, to all intents and purposes, merged with the Citizens National Bank of Durham. I understand that just awaits the approval of the Commission. It has been announced that the First Union National Bank of Charlotte was merging with the Durham Industrial Bank. I am not a member of the Board of Directors of any of these banks. I was on the Durham Bank & Trust Board. As to the reason for these mergers, I think it is quite logical to assume that the banks realize that Durham is in for large growth due to the Research Triangle, and they want to be in position to participate in that growth and what it means bank-wise to a greater degree.

I have an opinion as to whether the discontinuance of Passenger Trains 13 and 16 would affect the public convenience and necessity of the traveling public in Durham. As I have stated before, I think it is certainly logical to assume that Durham and that immediate area, Chapel Hill, as well as Raleigh, should expect, and I think will develop and grow due to the Research Triangle, and bring large numbers of additional residents to this area; and for that one reason, I think it is most inopportune if we should lose passenger service, and a lot of the people, I don't myself, and I am not particularly anxious for my wife and I to fly at the same time, and a lot of people use the train for that reason, and there are a lot of people that do not like to fly, and I think that it is absolutely essential that we have ready transportation for the highly technical people as well as others that come to the area, in the way of train service, plane service, what-have-you, because regardless of weather, they have got to move at times, and it is essential that we have safe service, as well as adequate service, and my opinion, my own personal opinion is that we will soon see adequate patronage for passenger service of all kinds to need the service of not only the airlines but buses and

railroads as well. I consider that today in present conditions in the Durham area that the retention of this passenger service not only serves the convenience of the public [fol. 234] but that it is a necessity. I don't think there is any doubt but that that will be even more true in the immediate years to come.

I believe that probably everything of any importance has been covered by my testimony.

Cross examination.

By Mr. Joyner:

I am Vice President of the Erwin Mills. I do not have any records showing the amount of travel on Trains 13 and 16 by personnel of the Erwin Mills. We could probably get up such records at the company. I'll have to say that there has been very little.

DR. ROBERT E. CUSHMAN testified as follows:

Direct examination.

By Mr. Bryson:

My name is Dean Robert E. Cushman. I live in Durham, N.C. I have been a resident of Durham for 15 years, and I am connected with Duke University as Dean of the Divinity School.

Q. Now, during your residence in Durham and particularly in the University community, have you observed any growth in the University community so far as the number of students, faculty members are concerned?

A. Unquestionably. I would say that other activities at the University such as meetings and institutes and similar activities have multiplied 75% in the last 15 years. I unquestionably anticipate an increase in those activities. The people who participate in these activities usually come from the metropolitan area of New York or from Chicago or from Washington. In some instances, of course, from the more southerly regions, Atlanta and points west. In some

instances from all parts of the country and all parts of the world.

In my work as Dean of the Divinity School and in other capacity I have occasion to do much traveling. These occasions take me all over the United States, mainly in the [fol. 235] eastern half of the United States. Last year I made a very extensive trip on an average of once a month, perhaps twice a month, and such trips took me to New York, Boston, Portland, Me., and as far west as Chicago, Kansas City, Tulsa, Okla., Birmingham, Alabama, Atlanta, and Nashville. I ordinarily use that method or manner of travel which suits me best, in view of the circumstances. I use plane and train. I make use of the Southern passenger service in and out of the City of Durham. I make use of that very frequently.

As to why I use that service, first, I would like to tell you that in 15 years at Duke I have had occasion to travel to New York on professional business, learned societies and other meetings many times a year, and in the course of those 15 years I found it convenient to employ the Southern Railroad, leaving Durham, connecting with Greensboro train and going to New York. I have never flown to New York. I have flown from New York only once in my 15 years. Now, why? Because I often find it necessary to do business reading, preparation for meetings on the train to New York, and oftentimes I cannot get to the matters in hand until I get into my roomette; and then I do some business; and this is one of the reasons, a very good reason, why I prefer to travel by rail whenever I can.

To my personal knowledge members of my staff, my associates make use of this same passenger train facility. Professor Shelton Smith, Director of Graduate Studies, continuously employs the train. For the past two years in working on a two-volume work for Scribner's Publishing Company, he has been constantly traveling to and from New York City. I think Professor Stinespring, Professor Richie, Professor Clark, and others.

I have never thought that the effort of the Southern in regard to advertising or promoting its service in any way [fol. 236] among the faculty members or students was conspicuous, and I may state in reply that I was startled two

years ago to discover that one of my colleagues who had been a member of the faculty for at least half a dozen years did not even know of the service out of Durham to New York via Greensboro.

Q. Dr. Cushman, did you consider the continuation of these trains essential for the public convenience?

A. Well, I think the answer to that question is so obvious that to answer it would be ludicrous.

Q. I apologize for asking it, but I would like for you to answer it.

A. I think unquestionably yes.

JAMES P. REIT testified as follows:

Direct examination.

By Mr. Bryson:

I am a student at Duke University. I am a Junior. My home is in Brooklyn, N. Y. I formerly lived in Cleveland, Ohio.

I am a member of YMI. It is a branch of the YMCA. It makes it a policy of meeting the incoming trains to Durham when school opens in the first of the year. Among the duties of the organization is advising Freshmen during their orientation week, various duties, helping boys out, meeting the train and buses and things like that. Orientation week is the week prior to the opening of school when the first-year students usually come in.

In such capacity I met the incoming Southern Railway passenger trains throughout the whole orientation week. Another student, James Whitmore, was with me at the time. He is in the courtroom this morning. I met the train from Thursday, September 10, through Wednesday, September 16. That is the train that arrives in the Durham station at approximately eight o'clock in the morning.

[fol. 237] Q. What was the first date you indicated you met this train?

A. September 10.

Q. To your knowledge, how many students arrived on that train to enter Duke University?

A. Well, you mean Freshmen?

Q. Well, the whole group?

A. Eighteen students that day.

The next day that any student came in was on Monday, September 14. I was present on that day. On that day, four students arrived. The next day was Tuesday, September 15, and there were eight students that day. On Wednesday, September 16, there were seven students.

To my knowledge the Southern Railway Company has not made any effort to advertise its passenger facilities among the students there on the campus since I have been there. I have never seen anything at all about it. My home is in Brooklyn. When I came to the University this year I used the Southern Railroad, the train we have been talking about. On occasion my mother visits me. Last year, she made three or four trips down here from New York. She used the Southern Railroad train that we are talking about.

Cross examination.

By Mr. Joyner:

I met the train seven days. A total of 37 students got off the train. They were not just Freshmen, they were all students. There are roughly 5,000 students at Duke. There are roughly 5,000 students and 37 arrived by train.

I did not meet the airplane. To my knowledge no one met the airplane. I haven't the slightest idea of how many students arrived by plane. I didn't meet the bus but I believe some of the men in our organization did. I don't know how many came on the bus. I will say we had two people meeting the buses; I am not definitely sure.

[fol. 238] JAMES WHITMORE testified as follows:

Direct examination.

By Mr. Bryson:

I heard Mr. Reit's testimony. My examination and cross-examination would be substantially the same as his.

Cross examination.

By Mr. Joyner:

I do not know anything about the number of students who arrived by air or by bus. We made no study at all of the airplanes, I am sure. We had two boys with a truck who worked together with the train station and the bus station. They met the train the same time we did. I think there was a bus that came in earlier but they met this train when we were there to help take the luggage and the students that did arrive back to the University. There was one time in the morning for the train station. They did meet the bus every time during the day that a bus arrived that students would be on. As to the number of students that arrived by bus, I couldn't estimate.

C. N. HIBBARD testified as follows:

Direct examination.

By Mr. Brooks:

I live in Durham, N. C. I have lived in Durham for 72 years. I am engaged in the florist business. My father was in that business in Durham and I succeeded him in the business. The business has been continually operating in Durham for 71 years.

I have occasion to use the train, the Southern Railway train from and to Greensboro and points north. We try to make two trips a year. We use the train to go for buying purposes mostly to the eastern seaboard. We go to Philadelphia, Baltimore and New York and Boston. We use the train because it is the only way, we think, from Durham to New York because if you come down to Raleigh, here, you got to bring a car and somebody go back and you are worried about them at night, about getting back, and I can have my dinner at home, get on the train, get my breakfast on the train and be in New York by 9:00 or 9:30 in the morning, and if I want to I can catch that train back again about 7 o'clock in the evening.

That train brings merchandise to my place of business in Durham. It brings flowers by express. I use the express of the Southern Railway to bring flowers into Durham for my business because that is the only way we can get them in there, through the Southern over there, and it is direct. The use of planes for flowers is not so good. If they get too high, they can get airsick. If the airplanes go too high, the flowers can get airsick. There is no pressurized compartment on the plane. They can get airsick and they will never come back. The Southern at least keeps them from getting train-sick. The flowers come down by express. I can phone to Philadelphia around 2:30 o'clock and they will be in Durham the next morning at 8 o'clock on this train. As to my traveling on the train, I consider that a need and a necessity for my business, in order to carry on my business.

Examination by Commissioner Eller:

Q. Do I understand that if this passenger train is discontinued, you can't get your flowers; they have to come in on this passenger train?

A. That is the only direct route we got today, sir, because the express trucks are not satisfactory; and if they come in over here on the Seaboard, they have got one coming in from Norfolk and that doesn't run on Saturday.

This should be a general trait or characteristic of all florists in the area, that should apply to them all.

Cross examination.

By Mr. Joyner:

As to whether it would be satisfactory to me if the express company delivered my flowers by truck rather than by rail, if they ran six or seven days a week it would be, [fol. 240] but they haven't been doing that. That one, if we get anything like coming from Florida, comes up to Henderson and catches that train which doesn't get into Durham until about one o'clock and it doesn't run on Saturday and doesn't run Sunday..

Q. Yes, but if the flowers came on the Southern Railway train to Greensboro and were taken from Greensboro to Durham by Railway Express truck and got to Durham at the same time as the train now arrives in Durham, that would be satisfactory to you?

A. But it hasn't been doing that.

Q. But if that were done, that would be satisfactory, would it not?

A. Well, now, I don't think, it is not as fast. We haven't found anything with the truck—it hasn't been satisfactory to us; not the express by truck.

MRS. MARY BIDDLE TRENT SEMANS (recalled):

Redirect examination.

By Mr. Brooks:

I have an opinion as to what should be done to improve the rail service for these trains involved in Durham. I have some very strong opinions. Actually I believe the specific question was directed to Mr. Hill this way: Did he think it justifiable to do anything about the railroad depot in Durham? In other words, the ticket agent, would it be justifiable to employ someone else. Well, my answer is this way. I think that this, first of all, is indivisible from the overall problem of service. I do have some specific things that could be taken into consideration. I would not demand another person there without some other things being tried. I believe in being fair. I would have a telephone listing in the telephone book similar to the one by the Seaboard train, showing the Greensboro number. This is basic, I think. I would not only do that, but I might even try a modern business method of reversing charges on those calls. This is done by a good many branch businesses [fol. 241] that have offices in outlying sections of the community, or in branch stores in neighboring communities. That would be after-hour calls, and you could list the house that these could be used. I would make arrangements with the Railway Express Company and perhaps have someone

there to take calls. I have personally just through my own friendship with some of the people there, established a method of getting information this way, but this is not known by the general public. In fact, I have tried to help the railroad out. I have tried to disseminate some of this information in Durham. Of course, you can't reach potential passengers that way. I would try an answering service.

As to whether there are enough potential customers to greatly increase the passengers if the Southern lets the people know the train is running, one of the first tenets of modern business and modern business methods is to keep a telephone covered. I know this. I think that definitely it would be justifiable to attempt all sorts of promotional schemes that have never been tried. After all, it has been established in the 20th Century that advertising is one of the main means of acquiring business; and in good times, there is no excuse for any business not to be promoted this way; and I feel very definitely that the situation with regard to the passenger service in Durham is such that there are potential users.

Now, for instance, yesterday I was asked if it were not true that the Seaboard office handled a lot of trips to Florida. This is certainly true, but they also handle and promote trips to the north, and I am certain that this is why they employ certain numbers of their five people in their office when there are no potential trains into Durham. They employ all of these people and they actively promote their northern route. Just last week I had a postcard showing their Washington Dome Train, in the mail and I have [fol. 242] been told personally by the lady in the ticket office there, "We want passengers. We are anxious for passengers." And I know of my own personal knowledge that many of my friends use that train. It is convenient and the office is open, and there is another train number that you can call after hours. They also solicit business from the city schools and all of the school trips that I know of personally that go to Washington for the school children and New York to advise the various places to go by way of the Seaboard line. They go up there for journalism trips, etc., and they crowd in the station so that you can hardly get to

the train. That is the Seaboard line, and this could all go from Durham if the promotional work were done.

May I say one other thing? I just feel this way. As I stated before, I realize that the railroads have a problem and I have made a definite study of this matter. It may seem strange but I am really interested and I personally have written my Congressman without any request from the railroad, many times, to help the railroads in these legislative matters. I will continue to do it. I am that interested, but I do think that this is not striking the heart of the matter. I think the Canadian Railways, by the fact that they carried it all the way to the higher courts on the featherbedding situation and got an agreement whereby they only have to carry firemen on steam powered locomotives, for instance, is a challenge to the United States railroads to go ahead and do something about the heart of the matter and not to try to take our passenger service away, which I think is absolutely necessary and will continue to be.

DR. H. T. PARKER testified as follows:

Direct examination.

By Mr. Burns:

I am with the faculty of Duke University. I am in the Department of History. I have been on the faculty of Duke [fol. 243] for twenty years. I make about five trips a year to and from Durham for business or personal reasons. Usually they are professional trips. I mean I attend the American Historical Association that usually meets in Washington, New York, two or three years, and there is another society of French Historical Studies that meets in the Cleveland-New York area. I investigate at Swarthmore and Oberlin. That was for the University.

In the past year I attended the American Historical Association which met in Washington. It meets in Washington or New York two out of three years. The Society of French Historical Studies which meets in the northern area every

year. Occasionally I serve as outside examiner at Swarthmore, or I may be on business for the University to examine other institutions. It so happens I go to Europe every summer for research. In making all of these trips that I have described I used the Southern Railway train out of Durham. I use the Southern Railway facilities for making these trips chiefly by reason of convenience. One can work all day and then take the train at night and then arrive and continue working the next day. I use the facilities of the train because they are convenient.

I use the facilities of the train as a place in which to study in preparation for meetings which I may attend at these far distant places when I am crowded, when I am thronged, when I am busy. I work until 10 or 11 o'clock at night. I did that twice this last year. I worked on the train. I would say that the continuation of these trains is certainly essential to my convenience as a member of the traveling public. As to whether I actually need these trains, one would resort to makeshift. One can't walk out of Durham.

To my knowledge there are no other facilities which would be as useful for the purposes as these two trains. [fol 244] During the twenty years that I have been associated with Duke, I have not seen any advertising or promotion of the Southern as far as its passenger traffic other than the promotion at the station. I think that it is correct that I have not received any sort of literature brochures or advertisements or anything like that.

Cross examination.

By Mr. Joyner:

I do not know the air schedules to Washington and New York. I do not know how long it takes airplanes to fly to Washington and New York from Raleigh-Durham. To Washington, perhaps three or four hours. I fly to Europe every year.

At this point, without objection, the following language of the Lease from the North Carolina Railroad Company dated August 16, 1895, to the Southern Railway Company was introduced by Mr. Brooks, on behalf of the protestants, "... shall have leave to change any shops, tracks, houses and other things in such way as to promote the convenience of shipments of freight, travel and the safety of the road and property ..."

STIPULATION READ INTO RECORD

The following stipulation, agreed on by the attorneys for the petitioner and the attorneys for the protestants, was read into the record by Mr. Burns:

"The North Carolina Utilities Commission in granting freight rate increases to all railroads operating in North Carolina, in the following cases, considered as a factor the passenger operating deficits of such railroads. Docket No. R-53, Sub 3, dated June 21, 1957. R-66, Sub 6, dated March 14, 1958. R-66, Sub 9, March 14, 1958. R-66, Sub 20, June 20, 1958."

It was further stipulated by the attorneys for all parties that the Railway Express Company does not have present truck authority to serve Elon College, North Carolina. [fol. 245] The copy, consisting of five pages, of the reports appearing in the Traffic Department of the Utilities Commission, showing the railroad passenger station ratings for September, 1959, and the individual reports on the passenger stations at Durham and Burlington were identified as Exhibit G.

[fol. 246] PARKS M. Low testified as follows:

Direct examination.

By Mr. Burns:

I am in this case appearing at Mr. Burns' request. All of the computations which I have made were pursuant to Mr. Burns' request.

My name is Parks M. Low. I am a rate specialist, North Carolina Utilities Commission, Raleigh, N.C. During the period June, 1925, to April, 1947, I was employed by the Atlantic Coast Line Railroad Company in its Freight Traffic Department. From April, 1947, to August, 1950, I was assigned to the Staff of the Vice President, Traffic. Since August, 1950, I have been employed in the Traffic Department of the North Carolina Utilities Commission.

I am familiar with the forms used by railroads in reporting passengers handled on the various trains. While employed with the Coast Line, I made branch line surveys in the course of which the handling of passengers was involved. I am familiar with the issue involved in this proceeding.

I have made a study of the passengers handled on Trains 13 and 16 of the Southern Railway. I have examined the conductors' wire reports of Trains Nos. 13 and 16 of the Southern Railway operating between Greensboro and Goldsboro, and have prepared a statement consisting of four sheets which I tender as Exhibit No. H.

Exhibit No. H (identified).

Page 2 shows passengers handled on Train 13 operating from Goldsboro to Greensboro, by month, and for the twelve-months period. The passengers riding in coaches and Pullmans, as well as the revenue and dead-head passengers shown separately. Sheet 3 shows the same information for train 16 operating from Greensboro to Goldsboro. Sheet 4 shows the passengers handled on both trains, or the figures of Sheets 2 and 3 added together. It will be noted that 33% of the total passengers handled rode in Pullmans and 8.4% were dead-heads.

The figures in Exhibit H were compiled from the original wire forms furnished by the Southern Railway Company. I have made computations from the forms as to the number of times these trains were late in arriving at Goldsboro. Train 16 was late 172 times during the 12-month period. On 91 occasions it was less than 30 minutes late, 52 it was late between 30 minutes and an hour and on 24 occasions it was between 1 and 2 hours late and on

4 occasions it was more than 2 hours late. Train 13 was late only 8 times, seven times less than 30 minutes and one time it was late as much as 50 minutes.

On page 2 of my Exhibit I show 5 days missing in the months of January, February and April, 1959, on train 13. I have compared my figures for those months with the figures shown in Mr. Gleason's Exhibit No. 4 which shows Pullman and coach passengers during these months. For the month of January, Mr. Gleason showed 24 more Pullman passengers and 312 or more coach passengers. For February, he showed 25 more Pullman passengers and 10 more coach passengers. For April he showed 30 more Pullman passengers and 27 more coach passengers, or a total of 448 passengers during those three months more than I have compiled from the conductors' reports. On page 4 of my Exhibit if I added the figures that Mr. Gleason showed which I did not find in my examination of the conductors' wire reports, the total would be 18,167 passengers or an average of 49.8 passengers a day.

I have made an analysis of State's Exhibits A through F and have made certain totals based on the information [fol. 248] in these exhibits for the period July 1 through September 15, 1959, for trains 13 and 16. I found that of the 2,757 passengers shown as moving on these trains, 1,393 or 50.5% moved beyond Greensboro, and the total revenues for those, the revenues accrued to the Line, was \$3,940.00. The off-line revenue was \$14,871.00, or a total of \$18,811.00. The on-line revenue was 20.9% of the total and the off-line revenue was 79.1% of the total. According to these figures, you could say that for each dollar of revenue derived from traffic on the line traveled by trains 13 and 16 the Southern Railway on the average would receive \$4.00 in off-line revenue.

67.5% of the passengers that went on the Southern Railway line moved beyond the rails of the Southern Railway, moved on other lines such as the Pennsylvania, the L&N and other lines. That is, 67% of the 50% that went beyond Greensboro went on lines other than the Southern.

Further Direct examination.

By Mr. Bryant:

The net income after fixed charges and other deductions of the Southern Railway Company as shown in the annual reports on file with the Utilities Commission is as follows for 1955—\$37,993,249; for 1956—\$38,871,606; and for 1957—\$34,066,710.

Cross examination.

By Mr. Dixon:

All of my experience with the Coastline was in the Traffic Department. My testimony and the exhibit are based on the Southern's conductor wire reports. The making of those reports is an operating department function. I have had previous experience in evaluating such reports. The operating department of the Coastline furnishes the traffic department with copies of these reports every day on all their trains. They are furnished and come into the Traffic Department every day. And then too, in making [fol. 249] branch line survey on the Coastline I came into contact with those reports with the Operating Department. In addition to showing the number of revenue and dead-head passengers handled, these reports show the locomotive number, the date, the time it left Greensboro and the number of minutes late it was arriving in or at the other junction point. The report is Form 604.

I don't know what the main purposes of those reports are. With the Coastline, we were mainly determining the number of dead-heads riding on the train. In the Traffic Department that information was used for getting the number of dead-heads who were riding on the train. That was the Traffic Department's use. This is an Operating Department report. I would have to speculate as to whether the main purpose of the reports would be to get advance notice of delays to these trains. I do not know exactly. I have no reason to doubt that that is the main purpose.

I heard Mr. Gleason's testimony that his Exhibit No. 4 which shows the on-and-off count during the period cov-

ered by the exhibit was based on the tickets reported to the Auditor of Passenger Accounts at Atlanta. I would hesitate to say whether the Operating Department report on Form 604 or an analysis of the actual tickets sent by the train conductor to the Auditing Office in Atlanta would be more accurate because I have never had any experience as to the accuracy of the conductors on the Southern.

As to dead-head passengers the report does not show how many were foreign line employees as distinguished from Southern Railway employees. It merely shows the pass passengers. It does not show how many of the passengers were traveling on company business, how many on their own business, or how many on pleasure. When I stated that train 16 was late 172 times and so forth I was speaking of the arrival at Goldsboro. That is the end of the [fol. 250] run. And when I referred to train 13 being late only 8 times that was at Greensboro. So far as these reports show both trains were on time at Durham and Raleigh. They did show that they were late leaving Greensboro on a number of occasions because of connections. Whether No. 13 missed No. 38 on any of the 8 times it was late at Greensboro is not shown on the reports.

I made an analysis of Exhibits A through F at Mr. Burns' request. I can't tell what portion of passengers were west of Mebane. I am afraid I don't know whether the railroad would have a good chance of being able to retain that traffic on the main line out of Greensboro. I wouldn't have any facts on which to base such opinion. I don't have them. I would respect Mr. Beck's knowledge. He knows more about it than I do.

MRS. LUCILLE BLAKE testified:

Direct examination.

By Mr. Bryson:

I live in New York City at 131 East 66th Street. I came to Raleigh a few minutes ago from Durham. I was in Durham for my usual check up with Dr. Walter Kempner at Duke Hospital. I am here for medical treatment and check

up with Dr. Kempner. I will have been a patient of Dr. Kempner's for 11 years next month, November 15th. During all of that time I have made periodic visits backwards and forwards from New York to Durham, and I spend a great deal of time at Durham now. I have always used the Pullman on the Southern Railway train that comes from New York direct to Durham. When I first came, I was so ill I couldn't come any other way and then Dr. Kempner advised me to use the train because of my various conditions, that he thought I should not subject myself to planes. I have been using the service 11 years next month. I just came down on it Monday.

[fol. 251] MRS. BERNICE KRASNE testified:

Direct examination.

By Mr. Bryson:

I live in New York City. I came over here from Durham with Mrs. Blake. I came to Durham on Wednesday morning. I came for a Trustee Meeting of the Walter Kempner Foundation.

I am a patient. I have been under Dr. Kempner's care for 12 years. During that 12 years and even up until now I make trips to Durham two or three times a year. I use only the railroad in making those trips, the Southern Railroad from New York City to Durham. I use the New York car that comes into the Durham station. I make the trips upon the advice of my physician. At the beginning I was too ill to travel any other way, and he advised my using the train; and I do not care for air transportation. I still use only the Southern Railway.

Cross examination.

By Mr. Joyner:

Mrs. Blake and I drove over from Durham to Raleigh today.

Redirect examination.

By Mr. Bryson:

As to whether the elimination of this passenger service would be a hardship on myself and others similarly situated, I think it would be a tremendous hardship. I know of many patients who have come here from New York who are not too well and who are not able to make the trip by bus, are not well enough to fly. They have heart conditions, and they are apprehensive about flying; and I think that if they came on to any nearby city such as Raleigh or wherever else the train might stop, I think the trip in itself would be too much for them. It is enough that they have to make the trip by train, but to take two trains or take a train and a bus, it would be difficult for them. I know of patients who have come down practically on stretchers, and I think it is a wonderful thing that they are able to come right into the town. I think it would be a dreadful thing for [fol. 252] them to go to a town half a day away and make an additional trip by ambulance. When they get into the Durham station, it is only a few minutes by taxi or ambulance to the hospital.

DR. T. E. POWELL testified:

Direct examination.

By Mr. Burns:

I live at Elon College. We operate a biological supply business. The easiest way to tell what my business is would be this. Originally I taught biology and that was prior to 1927, and we had so much trouble securing the materials that we used in the laboratories, dissecting specimens and others items we use to teach the lab work, until I hit on the plan during the depression that it would be an ideal thing for me to leave teaching and go out and offer these services to other colleges and universities throughout America, and I have just sacrificed my teaching ability for that purpose and that is what we did.

Our aim and our business is to sell virtually everything that can be used or is used in a biological laboratory. There are occasionally a few items no one can furnish, but the ordinary active items that are used in State College or anywhere they teach biology, we set ourselves up to supply those things and when they want them.

Our customers are teachers wherever you find biology taught in the United States, but the big customers that we have, the biggest, the largest university you can think of, Harvard University, Yale University, Purdue University, University of Illinois, University of Cincinnati, both of the California Universities, four or five of them, one at Davis, Berkeley, Los Angeles, and maybe one or two. All those are our customers; wherever you find the big colleges, the big universities and even the high schools. Not only do we find them in the colleges and universities, but we go into [fol. 253] hospitals and nursing homes. I mean not homes but where they teach nursing.

When we went into business, I think Elon College had, I may be in error, but I know they did when I first went up there, they had five trains each way each day. If you missed one at 9 o'clock, you can go there at 10 o'clock. You can get another one. Five trains each way each day, so we can get our materials scattered all over the country. I know it was that way in 1915 and by 1927 when we started business they may have reduced it some, but we have to have transportation in order to get these things out.

I am concerned with the express. We receive express shipments from all over the country. Our main concern here is not a thing we ship is a staple item. You could send it by freight or something else if they were things like a horseshoe or microscope or something like that. But what we are concerned with are living items, items that if they suffer a delay die; and when they die, our customers write and tell us that they are dead and we receive a credit memorandum and we have to make up the loss, and it is building up all the time. If we don't have a way to get it, we don't know what we are going to do.

As to whether there is anything else we could use, any sort of air express, I will say yes and no. There are two answers to that question. The answer is this. The nearest air express to us is up there near Greensboro, nearly half-

way between Greensboro and Winston-Salem. It is a long way out there to go there. But now just suppose we got there and put our animals on that express. What is going to happen when he gets to where he is going to? The university, you take a place like Chapel Hill over here. We ship a lot of things to Chapel Hill where we would ship it to Chapel Hill. They wouldn't necessarily go over to [fol. 254] the airport to pick it up. They don't have those facilities, so even if we got it there, the receiving station wouldn't have the facilities to pick it up, so we are washed out on that. In other words, I do not think that air would now be satisfactory for my purpose. As to postal deliveries, we do some; but the Federal regulations bar from the U. S. mail a great number of these animals which we ship, and express is the only way in which they can be shipped.

The total express charges paid by me in incoming and outgoing freight from June 1, 1958 to June 1, 1959 amounted to \$13,463.14. These figures do not include, though, the express prepaid by our vendors. The people we buy from add it on the bill. These figures are taken from the express bills which we have in our possession. That is the amount we actually paid. The great amount of our shipments are made in such a way that the receiver will pay the express charges on the shipment. I can't give you the dollar and cents figure of this type of shipment because they are not available to us. They are shipped out, and the customer pays it. The only thing we can do and guess how much they are going to pay, but we can give you some facts. We shipped 2,130 such shipments during that time; and in those shipments were 4,009 pieces which weighed 83,641 pounds. During the period from June 1st up to September 30th of this year we paid \$5,231.37 in actual money for express on a declared valuation of \$122,601.75; but these figures do not include again the express charges prepaid by our vendors who send us things and bill them on there. These are the figures we have paid out. The figures do not include the shipments which we send out c.o.d. The shipments that went in the same length of time to customers and the time to have paid for that many was 595 shipments have 1,243 pieces weighing 26,725 pounds gross weight.

If there is no express service where we are now, we could not operate the business as we have it now. There [fol. 255] might be some pieces of it you could run, but these pieces are dependent upon the whole, the whole thing is a unit. It is like the cow. You can't take off one part and the other part is going to live. Without it we have to dry up, waste away and go somewhere else. Without the express service I would have to do something, go back to teaching I guess.

Cross examination.

By Mr. Dixon:

We ship just about everything that is used in biology. We start off with microscopic forms, the free living protozoa. We have got maybe three or four, amoebae, paramcium, etc. I could say microscopic organisms. Maybe we should break it up a little bit. We have the free living types which is used in the laboratory, and then we have the bacteriological type, the pathological and the non-pathogens. We ship those all over the country, and you can't draw a line on it. In fact, Carolina Biological Supply Company is the first company on these cultures selling them over the United States. We sell mice and rats and there again, a little mouse put in a box, the mouse is worth maybe 60¢ and the minimum charge on that thing by express is about \$2.60 to go to Greensboro.

We ship them anywhere and everywhere they want them. They move across the country in rail service. That is the only way they can go. I cannot ship them by parcel post. The U.S. mail won't accept them.—I don't ship them by air express. The thing has got to be there. The trouble with air on most of our things that if you get them so high that the pressure kills them off and the cool temperatures and it wouldn't go from here to Elon College. It would be dead when it comes there because the vacuum effect up there kills them off.

I understand that the proposal here is to discontinue trains 13 and 16 on to Greensboro.

Q. And the evidence shows that the Railway Express [fol. 256] Agency also has a truck route between Goldsboro

and Greensboro which serves Greensboro, Durham, Raleigh, and, I believe, Selma. Now, supposing the Railway Express Agency extended that truck route to also serve Elon College. That would mean that the truck route would come and take up your stuff just as it does and instead of taking it to the depot at Elon College and putting it on the train, it would take it to Greensboro and put it on the train; would that satisfy your needs?

A. No, sir.

Q. Why?

A. To start off with, you have to put about three trucks on. You don't do it with one. On Saturdays and Fridays we have more shipments from our one place than any one truck they have got or can put on the highway that the State laws will allow them to run. We will more than fill it, and we can't tell when those things are going to come. Maybe one day they got two trucks and the next day they got a fourth of a truck. That is the sort of thing the way they got it. Our material has to go. If we are going to stay and maintain the service that we have the reputation. If we maintain our reputation, we got to put the material there; and at Harvard University they got a class Monday morning, if the material is not there and once you are bawled out by Harvard, you are bawled out and you know it.

Suppose there comes a snow on Friday and your man don't run the highway on Friday and we are depending on that truck to get that stuff going and then Monday morning we get this little letter from Harvard, where is our material?

If the service by truck would be equal or superior to that by rail in point of time, that would satisfy my needs if you would guarantee us that the weather won't stop those trucks and they would run all the time.

[fol. 257] I have discussed this matter with the Railway Express Agency. Not specifically this thing, but I have gone along. In other words, when they cut off the first train back yonder several years ago, various ones come down and trade with us, if you folks won't protest we will do this and so, and then they come along and take off another. We still got one train going both ways. You folks won't be hurt. When they come to get this last one,

I haven't discussed a single one. This was the last. If this goes, there is nothing left.

Redirect examination.

By Mr. Burns:

The States to which I send the greatest number of my shipments are as follows: 10.2% of our sales go to New York; 6.21% of our sales go to Pennsylvania; 6.07% of our sales go to Ohio; 5.58% of our sales go to New Jersey; 5.06% of our sales go to Texas; 4.73% to California, and 4.06% to Illinois.

Recross examination.

By Mr. Dixon:

Q. I say on one day would you have consignments going to a dozen schools?

A. This is like a stream that runs. You couldn't ship it in one day. This is round the clock. We are talking about yearly sales. This is a quarterly sales.

Q. Does Railway Express Agency have a truck that comes to your place of business and carries it to the depot?

A. Oh, yes. Railway Express, they pick it up in Burlington. We have pick-up and delivery service. I have no complaint on that pick-up and delivery service from Burlington for both railroad freight and express, and some of my best friends, one of them sitting over yonder, is in the Southern Railway. We have nothing personal against them, but they are cutting off our livelihood.

Q. The Express Agency has no difficulty handling your express shipments?

A. Like it is now.

Q. Its trucks from your place of business to the depot at Elon College?

[fol. 258] A. Not too much. Once in a while the driver goes some place else and we have to call them, but most part—

Q. This is what puzzles me. Apparently they have no trouble handling your stuff from your place of business

to the depot at Elon College in a truck, but you say they couldn't handle it to Greensboro in a truck.

A. I wouldn't have the confidence in it. When you step it down, when you diminish, dilute it, it gets weaker and weaker and weaker, and when you take it away, the way I see it is this. You have got a railroad train that things is held to a schedule, and that truck can run into a ditch. It can run anywhere. It is not held to a schedule, and we don't know. We can't tell our customers when that truck is going to run. We can look at the timetable and figure the railroad. We don't figure that sleet, snow and stuff like that is going to interfere and disturb it. We have to call Harvard three months in advance. If on the first day of January we are supposed to get 40 living turtles up there to Harvard, they have got to go by express. If they are going to go over sleety roads and snow, can we guarantee that we are going to deliver them? Right now we can. But then we don't know.

Examination.

By Commissioner Noah:

The majority of my shipments go west towards Greensboro. Some go the other way towards Raleigh or Durham. To the most part State College and Chapel Hill, but the majority of these things, I think, the Express Company can tell you more about how they get them when they get them to Durham. That would be a matter of at most the main line going north and south on the Southern from Greensboro to New Orleans way, and up New York way, but I suppose when they get down here, if they got away down this way, they would send it down this way.

All these shipments are picked up by Railway Express trucks at Elon College. That local truck works out of [fol. 259] Burlington. It comes from Burlington over to Elon College, picks up the merchandise and carries it back to Burlington and processes it there.

Exhibits A through H admitted in evidence.

Exhibits A-1 through G-1 admitted in evidence.

Mr. Burns: Are all the other exhibits received in evidence?

Chairman Westcott: To make certain that none has been omitted, all exhibits identified by the petitioner and all exhibits identified by the intervenors and protestants are received in evidence.

[fol. 260]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. Finance 21563

In the Matter of:

SOUTHERN RAILWAY COMPANY,

Trains 13 and 16

Greensboro, N. C. to Goldsboro, N. C.

Transcript of Hearing—Tuesday, July 11, 1961

Met, pursuant to notice, at 9:30 a.m.

Before: William J. Gibbons, Examiner, Interstate Commerce Commission.

APPEARANCES:

Earl E. Eisenhart, P. O. Box 1808, Washington, D. C., appearing for the applicant.

Arthur J. Dixon, P. O. Box 1808, Washington, D. C., appearing for the applicant.

Claude V. Jones, 111 Corcoran Street, Durham, N. C., appearing for the City of Durham, N. C., protestant.

F. Kent Burns, P. O. Box 991, Raleigh, N. C., appearing for State of North Carolina and North Carolina Utilities Commission, protestant.

Victor S. Bryant, Box 666, Durham, N. C., appearing for Durham Chamber of Commerce, American Tobacco Company and Research Triangle Institute, protestants.

[fol. 261] E. C. Bryson, Duke University, Durham, North Carolina, appearing for Duke University, protestant.

E. C. Brooks, Jr., Durham, N. C., appearing for Durham Merchants Association and Mrs. Mary Trent Semans, protestants.

A. H. Graham, Jr., c/o Reade, Fuller, Newson & Graham, Durham, N. C., appearing for County of Durham, Liggett & Myers Tobacco Co., and Erwin Mills, Inc., protestants.

Robert B. Holton, 5401 Wrightsville Avenue, Wilmington, N. C., appearing for Railway Labor Executives Assoc. and Brotherhood of Railroad Trainmen, protestants.

W. J. Burton, Jr., 818 Third Street, Spencer, N. C., appearing for Brotherhood of Railway Clerks and Railroad Labor Executives Association, protestants.

R. L. Carnes, 549 Oak Street, Hamlet, N. C., appearing for Brotherhood of Locomotive, Firemen and Enginemen, and Railway Labor Executive Association, protestants.

[fol. 262]

Proceedings.

*Exam. Gibbons: The hearing will come to order. The Interstate Commerce Commission has set for hearing at this time and place an application of the Southern Railway Company, in Finance Docket 21563, under Section 13a(2) of the Interstate Commerce Act for permission to discontinue the operation of trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina. The matter has been assigned to a Hearing Examiner for hearing and for the recommendation of a report and order.

May we have the appearances for the record, beginning to the left?

Mr. Eisenhart: Earl E. Eisenhart and Arthur J. Dixon, appearing for the petitioner, Southern Railway Company. Our address is P. O. Box 1808, Washington 13, D. C. We have been admitted to practice before the Commission.

Mr. Jones: Claude V. Jones, appearing for the City of Durham, a municipal corporation, Durham County, North Carolina, appearing for the City in its behalf as a protestant against the granting of the application filed.

Mr. Burns: My name is F. Kent Burns, assistant Attorney General for the state of North Carolina. I appear for the state of North Carolina and for the North Carolina Utilities Commission, protestants; and I am permitted to practice before the Commission.

[fol. 263] **Mr. Bryant:** May it please Your Honor, my name is Victor S. Bryant, P. O. Box 666, Durham, North Carolina; appearing for the protestants, Durham Chamber of Commerce, The American Tobacco Company, and Research Triangle Institute. I have been admitted to practice before the Interstate Commerce Commission.

Mr. Bryson: Your Honor, please, my name is E. C. Bryson, 312 Law School Building, Duke University, Durham, North Carolina. I appear on the behalf of the protestant, Duke University.

Mr. Brooks: If your Honor please, this is E. C. Brooks, Jr. I appear for the Durham Merchants Association and Mrs. Mary Lunt Semans, protestants.

Mr. Graham: It please, sir, my name is A. H. Graham, Jr. My address is P. O. Box 2088, Durham, North Carolina. I appear for the protestants, County of Durham, Liggett & Myers Tobacco Company, and Erwin Mills, Inc.

Mr. Holton: My name is Robert B. Holton, 5401 Wrightsville Avenue, Wilmington, N. C. I appear on behalf of the Railway Labor Executives Association and Brotherhood of Railroad Trainmen, protestants.

Mr. Burton: My name is W. J. Burton, Jr., 818 Third St., Spencer, North Carolina. I appear on behalf of the Railroad Labor Executives Association and the Brotherhood of Railway Clerks, protestants.

[fol. 264] **Mr. Carnes:** Your Honor, my name is R. L. Carnes, 549 Oak Street, Hamlet, North Carolina, appearing for the Railway Labor Executive Association and the Brotherhood of Locomotive Firemen and Enginemen, protestants.

Exam. Gibbons: Are there any further appearances?

(No response.)

Exam. Gibbons: Let the records show that there are none. Do any of the parties care to make a statement at this time?

Mr. Dixon: Well, sir, I don't think there is very much to be said, in the way of an opening statement. We proceeded before the North Carolina Utilities Commission sometime back for authority to discontinue these trains, and our petition was denied with one dissenting vote. We appealed to the Superior Court of Wake County, here in Raleigh, where the decision of the Utilities Commission was affirmed, and we then went to the Supreme Court of North Carolina, where the decision of the court below was affirmed by divided vote, three judges for and three against, one not sitting. So then, believing that we had a just cause—

Mr. Jones: May I correct that statement? It was a unanimous decision.

Mr. Dixon: I am corrected, sir. I must be thinking of another case. Anyway, believing that we had a just cause, we proceeded before the ICC under Section 13a(2).

[fol. 265] Exam. Gibbons: Do any of the protestants care to make a statement at this time?

MOTIONS TO DISMISS AND COLLOQUY THEREON

Mr. Bryant: We have a motion which I desire to present to Your Honor at this time, and with your permission I will present the original of it to the bench.

Omitting if you will, please, the title, the motion is as follows:

"Now come the State of North Carolina, the North Carolina Utilities Commission, the City of Durham, the County of Durham, Duke University, Research Triangle Institute, The Durham Chamber of Commerce, Erwin Mills, Inc., Liggett & Myers Tobacco Company, The American Tobacco Company, Sperry Rand Corporation, Wright Machinery Company Division, and Mrs. Mary Trent Semans by and through their attorneys and respectfully move that the Commission dismiss the above-entitled proceeding and in support thereof show to the Commission that:

1.

The matter of public convenience and necessity for the continuation of these trains has been heretofore determined by a court of competent jurisdiction to wit, the North Carolina Supreme Court, 254 N.C. 73, opinion dated February 3, 1961, and such determination as of the time it was made is conclusive and binding on all parties in the present proceeding, for that said determination is *res adjudicata*, [fol. 266] as is shown in the record attached to the petition.

2.

The only matter for determination by the Commission in this proceeding is whether or not there has been such a change of conditions since the determination by the North Carolina Supreme Court as would warrant a finding that public convenience and necessity no longer requires the continued operation of Southern Railway Trains 13 and 16.

3.

The petitioner, Southern Railway Company, has not alleged a change of conditions since the judicial determination of the question of public convenience and necessity and, therefore, this proceeding must be dismissed.

Wherefore, your protestants respectfully pray that this proceeding be dismissed."

And that is submitted and signed by the Counsel for the parties.

I take it, if Your Honor please, there is no controversy of the fact, as stated by Mr. Dixon, that this matter has been heard by the Utilities Commission and the State of North Carolina, which ruled that these trains were matters of public convenience and necessity and should not be discontinued. It is also admitted, as I understand it, that the matter was then heard on appeal by the Superior Court of the State of North Carolina, where the decision of the [fol. 267] Utilities Commission was affirmed. It further admitted that the case was then appealed from the Superior Court of North Carolina to the Supreme Court of North Carolina, at which time the opinion of the Superior Court

was affirmed, as shown by 254 N.C., Page 73, by the unanimous decision.

Now, if Your Honor please, I assume that there is no controversy about the fact that the operations of these two trains, Nos. 13 and 16, is entirely an intra state operation, going from Greensboro in North Carolina almost in an East-West direction through the Central Piedmont area of North Carolina, to the eastern terminus of the route to Goldsboro, North Carolina, being a purely intra-state operation. If Your Honor please, we submit the plea of res adjudicata, and we think in the absence of any allegation that there has been any material change in the conditions which would warrant a review of this matter, we think that it should not be heard in view of that lack of allegation, and if indeed there had been such allegation, we think that it would have to be confirmed to the period after the third day of February, 1961, when the decision of the Supreme Court of North Carolina was rendered.

Exam. Gibbons: Is it your position that the Interstate Commerce Commission has no jurisdiction to hear this case unless there has been a showing or an allegation of changed conditions since the Supreme Court decision in February, 1961?

[fol. 268] Mr. Bryant: That is our position, sir.

Exam. Gibbons: Any further comments with respect to the motion to dismiss?

Mr. Dixon: Well, sir, actually I don't believe any comments are necessary, except to say that our petition is drawn in line with provisions of Section 13a(2). This matter is not res adjudicata; it raises federal issues which were not before the State Commission or the State Courts.

Exam. Gibbons: At this point I want to make the remark that the proceedings to which you have referred; specifically, the proceedings before the North Carolina State Public Utilities Commission, all of the court actions subsequent thereto, which affirm the Commission's action, all of those matters are a part of the record in this case.

Mr. Bryant: We had so understood.

Exam. Gibbons: Including the transcript before the North Carolina State Public Utilities Commission and all

exhibits, all matters attached thereto, have become a part of the official record.

Mr. Bryant: We had so understood, and it was our view, sir, that the reference to those proceedings, including the record and exhibits, would bear out and confirm the position which we have taken as to this matter being *res adjudicata*.

Exam. Gibbons: We will proceed with the hearing. The [fol. 269] motion to dismiss will be taken under advisement and will be considered at a later date.

Mr. Burns: Mr. Examiner, we also have two other motions which we would like to make at the outset. They will both be short.

Exam. Gibbons: Do you have them in written form?

Mr. Burns: Yes, sir. We do. We are missing a signature on one. If you will give us a second to get it signed—

Now, Mr. Examiner, we would like for the first motion to point out what we believe to be a fatal defect both in the proceeding and the petition as far as notices are concerned, and I would like to read those two motions:

“Now come the State of North Carolina, the North Carolina Utilities Commission, the City of Durham, the County of Durham, Duke University, Research Triangle Institute, the Durham Chamber of Commerce, Erwin Mills, Inc., Liggett & Myers Tobacco Company, The American Tobacco Company, Sperry Rand Corporation, Wright Machinery Company Division, and Mrs. Mary Trent Semans by and through their attorneys and respectfully move that the above-entitled proceeding be dismissed and in support thereof show to the Commission that:

1.

Part 43 of the General Rules and Regulations covering proposed discontinuance or change of operation or service of trains and ferries by carriers subject to Part 1 of the [fol. 270] Interstate Commerce Act and in particular Section 43.5 (j) (49 Code Fed. Regs. § 43.5 (j) require that notice of the proposed discontinuance be posted in a conspicuous place in each station depot and each passenger

car and further the fact of posting such notice be alleged in the petition under Section 13a(2).

2.

Southern Railway Company in its petition has not alleged the posting of notice of discontinuance as required by the Rules of the Commission.

3.

Southern Railway Company has not in fact posted notice as required by the Rules of the Commission.

Now, therefore, the protestants pray that this proceeding be dismissed."

And it is signed by the Attorneys for the various parties, and we consider this a fatal defect appearing in the petition. We could not make the allegation that the notice had been not in fact posted, until we made a check yesterday, to make sure that it had not in fact been posted, as required by the rules. Such a check was made and we can make the allegation that no such notice has been posted, much less that an allegation has been made about notice as required by the rules of the Commission. I think that's a fatal defect.

Exam. Gibbons: Are you going to present your other motion at this time?

Mr. Burns: Yes, sir.

This has to do with the constitutionality of Section 13a (2):

"Now come the State of North Carolina, the North Carolina Utilities Commission, the City of Durham, the County of Durham, Duke University, Research Triangle Institute, the Durham Chamber of Commerce, Erwin Mills, Inc., Liggett & Myers Tobacco Company, The American Tobacco Company, Sperry Rand Corporation, Wright Machinery Company Division, and Mrs. Mary Trent Semans by and through their attorneys and respectfully move that the above-entitled proceeding be dismissed and in support thereof show to the Commission that:

1.

Section 13a (2) of the Interstate Commerce Act (49 U.S.C.A. § 13a (2)) is unconstitutional in itself.

2.

The application of Section 13a (2) of the Interstate Commerce Act (49 U.S.C.A. § 13a (2)) in this proceeding deprives your protestants of their property without due process of law in that there has been no determination by an appropriate forum of the State of North Carolina as to the public convenience and necessity requirements relating to Trains 13 and 16 during the years of 1959 or 1960 which are relied on by the Southern Railway Company in its petition.

Wherefore, your protestants respectfully pray that this [fol. 272] proceeding be dismissed."

This was again signed by the attorneys for the various parties. I don't think further discussion of the latter motion is necessary.

Exam. Gibbons: With respect to the last motion, dismissal of this proceeding on the ground that Section 13a (2) is unconstitutional, that motion will be taken under advisement, but I might add that the Commission, the Interstate Commerce Commission, never rules upon the constitutionality of the statute that it is called upon to administer, as you know.

Mr. Burns: We thought that it might be advisable to make this for the record.

Exam. Gibbons: With respect to your other motion, that there was no posting of notices as required by the rules of the Commission, I would like to hear some evidence with respect to that point, on behalf of the railroad. However, that motion is one that I am sure will have to be ruled upon by the Commission. We will proceed—therefore that motion will be taken under advisement, and we will proceed with the case.

Mr. Burns: May I ask a question, sir?

Exam. Gibbons: Yes, sir.

Mr. Burns: Did I understand that, you to say that you would like to hear some testimony from the railroad about the notice?

[fol. 273] Exam. Gibbons: From both sides. If I didn't make that clear, I intended to include both sides.

Mr. Burns: Thank you, sir.

Mr. Bryant: If Your Honor please, may I ask Mr. Arthur Dixon, Counsel for the Railroad, if he and I might approach the bench in order that I might speak to you about a matter that I prefer to state off the record.

Exam. Gibbons: We can go off the record. You can state it from where you are.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: Back on the record.

If you will proceed, Mr. Dixon.

Mr. Brooks: Your Honor, please, may I just make the motion that the Durham Merchants Association joins in all the motions previously made for and behalf of the protestants. Their name was left out here, and I would like for the record to show it.

Exam. Gibbons: Very well. Proceed. Call your first witness.

Mr. Dixon: Mr. Waters.

Exam. Gibbons: Do you want all your witnesses sworn in at one time?

Mr. Dixon: That's all right.

Exam. Gibbons: Will all those in the Hearing Room that [fol. 274] are going to testify please stand and raise your right hand and be sworn.

L. L. WATERS was duly sworn and testified as follows:

Direct examination.

Mr. Dixon:

Q. Please state your name, residence and occupation?

A. L. L. Waters—

Exam. Gibbons: Just a moment. I wonder if the witness couldn't sit over on this side. Would that be just as satisfactory? That will be all right. Right there.

Witness: I am L. L. Waters, Manager of Transportation Service of Southern Railway System, P. O. Box 1808, Washington, D. C.

By Mr. Dixon:

Q. Briefly outline your railroad experience.

A. I have been in service with the Southern Railway System forty-two years, all of it in transportation. I have been an officer of the company over twenty-five years, Trainmaster, General Superintendent of Transportation and my present position.

Q. Are you the same L. L. Waters that testified in the proceeding before the North Carolina Utilities Commission?

A. Yes, sir, I am.

Q. Did you have any part in the preparation of the Southern's petition to the ICC in this proceeding?

[fol. 275] **A.** No, sir. Let me correct that— Yes, sir, I did.

Q. What part of this application are you responsible for?

A. I am responsible for that part of the application down to the bottom of page four in Southern Railway's train schedule.

Exam. Gibbons: Starting where?

The Witness: At the first.

By Mr. Dixon:

Q. As I understand your answer, you are responsible for that part of the petition beginning on the first page, and extending over to page four, just before paragraph four.

A. That is correct.

Q. In other words, the last sentence of your responsibility reads:

"This service is also available at Greensboro to many of the nearby communities now served by trains 13 and 16 East of Greensboro."

A. That is correct.

Q. And in addition, you are responsible for the accuracy of Exhibit 1, attached to the application, which is a schedule of trains 13 and 16, between Greensboro and Goldsboro?

A. Yes, sir. I am responsible for that, except the information concerning the population at the different stations involved; which was prepared by Mr. Bayliss.

Q. Mr. Bayliss will be a witness in this case, will he not? - [fol. 276]. A. Yes, sir, he will.

Q. Mr. Waters, do you have any corrections to make in that part of the application which was your responsibility?

A. Yes, sir. On paragraph 1 on page 3, a locomotive is referred to as a fifteen hundred horsepower road switcher. The locomotive now being used on this run is a fifteen hundred horsepower fp locomotive instead of a road switcher.

Q. What does fp stand for?

A. Freight-passenger.

Q. So with that correction, the part of the application for which you assume responsibility, is true and correct to the best of your knowledge and belief?

A. Yes, sir, it is.

Q. Now, Mr. Waters, when the appearances were entered this morning, we noted that several of these gentlemen represented railroad labor, the Brotherhoods, the Railway Labor Executives Association, will you please explain to the Examiner and the parties just what is going to happen to Labor if the ICC permits the discontinuance of these trains?

Exam. Gibbons: Mr. Dixon, might it be well at this point to have him explain how many employees would be affected, or do you have another witness?

Mr. Dixon: No, sir. He's the witness.

Exam. Gibbons: Can he explain that?

Mr. Dixon: Yes, sir.

[fol. 277] Exam. Gibbons: The number of employees and how they would be affected?

Mr. Dixon: That's what I was trying to say, Mr. Examiner.

The Witness: Southern Railway employees on this trains consist of two sets, an engineer, a fireman, a conductor, a flagman and a brakeman.

Exam. Gibbons: Pardon me just a moment. That would be two sets in each direction?

The Witness: No, sir.

Exam. Gibbons: One set in each direction?

The Witness: There are actually two crews working fifteen days each month, to make—they make a round trip a day.

Exam. Gibbons: Proceed.

The Witness: Ten men on these trains, if the trains are discontinued, they will flow back to other jobs.

Mr. Dixon: Are any of those men eligible for retirement?

The Witness: Yes, there are three eligible for retirement.

Exam. Gibbons: Pardon me. That's a total of ten men, not ten jobs?

The Witness: That's ten assignments, yes, sir. There are ten regular jobs and ten men assigned to those regular jobs. In other words, it consists of—a crew is five men, and there are two crews assigned.

[fol. 278] Exam. Gibbons: Very well. Proceed.

By Mr. Dixon:

Q. So is it fair to say that in the final analysis, none of the employees on these trains necessarily would be displaced?

A. That is right. None of the employees on these trains would be out of work; they will have employment as well or better than they have had in the past, pay-wise.

Q. I think that's all I have.

Exam. Gibbons: The cross examination is in order.

Mr. Burns: At this stage, may I ask to consider pages 1 through 4 as being a part of the record, a part of the pleadings?

Exam. Gibbons: I might say that the petition and all of the exhibits attached to the petition, constitute material

which the Commission requires, and it is a part of the record, subject to explanation of details by responsible witnesses, and subject to cross examination, so it is part of the record, sir.

Mr. Burns: In other words, it is not necessary to offer anything attached to or a part of the petition as a part of the evidence in this case?

Exam. Gibbons: I do not think it's necessary, but I usually incorporate the petition, and its attached, including the record proceeding.

Cross examination.

Mr. Burns: Thank you. Now I believe in the prior [fol. 279] proceeding, Mr. Waters, you testified that this train carried passengers as well as express. Is that correct?

A. Yes.

Q. Does the train still carry passengers as well as express?

A. Yes.

Q. Now, one of the express stops of this train has been eliminated since the last case, has it not?

A. Which one do you refer to, sir?

Q. The one at Elon College has been eliminated, hasn't it?

A. Yes.

Q. And that was by application to the North Carolina Utilities Commission?

A. Elon College is still a stop for this train. If you are referring to an express stop, we do not have an express agent at Elon College now.

Q. Since the last case there is not an express agent at Elon College?

A. That is right.

Q. Since the last case you have also eliminated one of the employees that was on the train, is that not correct?

A. Yes, sir.

Q. Which employee was that?

A. The train porter.

Q. Has the elimination of the express agency at Elon College made the operation of your train any more ex-

[fol. 280] pensive than it was at the time that this proceeding was heard before the Utilities Commission?

A. I have no information that it has.

Q. Has the elimination of the employee, which your company had as a porter, made the operation of these trains any more expensive than it was at the time of the hearing?

A. It amounted to one less employee, yes.

Q. You mean it has made it less expensive?

A. That's right.

Q. Now going back to the express just a minute, what is going to happen to express shippers along this line, in the event the trains are taken off?

Mr. Dixon: Mr. Examiner, if I may interrupt, we have a witness—in fact, our next witness will be an officer from the Railway Express Agency, who can answer all the express questions if that's satisfactory, Mr. Burns. Mr. McVay, the Superintendent from Greensboro is here, and he will be our next witness, and he will deal thoroughly with the express matter:

Mr. Burns: He is an employee of Southern Railway?

Mr. Dixon: No. He is an Express man.

Mr. Burns: Well, let me ask him just one question. Of your own knowledge, do you know what plans Southern Railway has made to take care of the express at these points—that will be without service if the train is taken off?

[fol. 281] A. I understand that the Express Company will provide adequate service.

Q. Then Southern Railway itself is not going to provide any sort of service, is that right?

A. I understand that the Express Company will provide it.

Q. Will that be by rail or by truck?

A. I understand it will be by truck.

Exam. Gibbons: These are the last two passenger trains between these two points, are they not?

The Witness: Yes, sir.

By Mr. Burns:

Q. In order to make that real clear—you did have at one time several trains operating over this line between Goldsboro and Greensboro, did you not?

A. Yes.

Q. I believe in your testimony, at any rate you took off two trains several years ago, about 1955?

A. About that, yes, sir.

Q. Then you took off two other trains about what time?

A. About 1957.

Q. Since 1957 these two trains have been the only trains serving that part of North Carolina, between Goldsboro and Greensboro?

A. The only two passenger trains between Greensboro and Goldsboro.

Q. Are you familiar with the counties through which [fol. 282] your train operates?

A. I am familiar with the stations. We have another witness that has maps and is familiar with the counties.

Q. Do you know whether or not there are any other trains operating, for example, in Orange County?

A. I know that there are other trains operating at Goldsboro and Raleigh, at points that we serve. That's the only information I have; I am not familiar with the counties.

Q. Do you know about other passenger trains in the City of Durham, for example?

A. I know of no other passenger trains in the city of Durham.

Q. That means not only of your own railroad, but of any other railroad?

A. I don't know of any other.

Q. What about Burlington, North Carolina?

A. These are the only two trains that serve Burlington.

Q. And that includes both Southern and any other railroad?

A. Only Southern serves Burlington.

Q. What about Elon College?

A. Same.

Q. Does any railroad at all serve the town of Chapel Hill, North Carolina?

A. Yes.

Q. What railroad serves that?

[fol. 283] A. Southern Railway.

Q. Is that passenger service or freight service?

A. Freight.

Q. For passenger service they would have to go to either Durham or Greensboro or Hillsboro?

A. Raleigh.

Q. Which is the closest town to Chapel Hill served by your service at the present?

A. Durham.

Q. It is a fact that the state university is located at Chapel Hill, North Carolina?

A. I understand that it is.

Q. Now are you familiar with the schedule of your connecting roads at Goldsboro, North Carolina?

A. Yes, sir.

Q. Are you the man in Southern Railway in charge of making schedules?

A. Yes, sir. Southern schedules.

Q. What kind of connections within one hour do you make with trains in Goldsboro?

A. The only two other trains that serve Goldsboro, except Southern Railway trains, and a southbound train goes through Goldsboro, No. 49 at 5:30 A.M. on the ACL and on the route to Wilmington, and a northbound train is due at Goldsboro at 9:35 from Wilmington.

[fol. 284] Q. It's due from? What time does this train leave Goldsboro?

A. 9:35 P.M.

Q. At what time?

A. 9:35 P.M.

Q. What train are you talking about, that leaves at that time?

A. 78.

Q. That's a Coastline train?

A. Yes, sir.

Q. At what time does your Southern Railway train get to Goldsboro, if someone wanted to catch this train no. 78?

A. 10:45 A.M.

Q. So they would wait from 10:45 A.M. until 11:35 P.M. for the connection?

A. I don't know whether they would wait or not; they might decide to ride the bus or an airplane.

Q. If they wanted to ride the train, that's what they would have to do?

A. If they wanted to ride the train, it would leave at 9:35.

Q. Are there any other connections to Goldsboro?

A. Bus connections, yes.

Q. Take the very train we were talking about a minute ago, do you have a train that—strike that, please—is there any other connection there at Goldsboro, with Southern [fol. 285] Railway trains?

A. There are only two other trains, in and out of Goldsboro, besides the two Southern trains, and they are the two I just referred to, the two Coastline trains.

Q. I believe it's true that you said that your train does not carry mail at this time?

A. It does not carry any United States mail.

Q. When was the last time your company made an effort to get mail to be carried over these trains?

A. The mail was discontinued over these trains in September of 1957, at which time there followed some negotiation between the railway and the railway mail service.

Q. Is that the last time you heard from the Post Office Department about mail on these trains?

A. I think so, yes.

Q. Who is responsible, as far as Southern Railway is concerned, for the cleanliness of stations?

A. The operating officers of the company.

Q. Which one is that, in particular?

A. Which station?

Q. Let's say Durham, for example?

A. The Superintendent at Greensboro is responsible for it, and he is responsible to the other—

Q. Who is the man that is ultimately responsible for it?

A. The Superintendent.

[fol. 286] Q. Who would that be?

A. Mr. Shu.

Q. Who? That's S-h-u?

A. Yes, sir.

Q. Who is Mr. Shu's boss?

A. Well, I am, in a way.

Q. You are the man that he reports to?

A. He reports to the General Manager and other general officers, of which I am one.

Q. He is not directly responsible to you for all matters relating to cleanliness of the stations or anything like that?

A. He is responsible to management, and I am part of management, yes, sir.

Q. Is there any other witness here that would share the responsibility for cleanliness of the stations with you?

A. I don't think I need anyone.

Q. Well, is there—whether you need them or not, is another question—but is there anyone here that would share that responsibility?

A. I think if I am not qualified, we might be able to find another witness.

Q. I don't mean that. I just want to know who to ask questions about.

A. I have given you the one.

[fol. 287] Q. You are the one?

A. Yes.

Q. Since the last case, have you put in eating facilities in any of the stations that did not have them at the time of the last case?

A. No, sir.

Q. There are still no coke machines?

A. No.

Q. No peanuts?

A. I don't know of any peanuts.

Q. There is no diner on this car that goes to Greensboro, or comes back from Greensboro, is there?

A. No, sir. Not any need of it on there.

Q. The fact remains, though, that once you put yourself in the hands of Southern Railway you can't get anything to eat until you get to the end of this train's line, is that right?

A. You are talking about the passengers from Durham?

Q. The passengers from Durham or any other place.

A. The last time I rode the train I was on the platform at Durham and when I was at Greensboro I had been on the train—

Q. What time was your dinner that night?

A. About 8:30.

Q. Is that Washington time?

[fol. 288] A. No, that's Eastern Standard Time, just like it is here right now.

Exam. Gibbons: I am not clear. Is there a diner on the train?

The Witness: This train that carries the New York connection to Greensboro does not have a diner, but the Raleigh, New York car hooks onto no. 38 at Greensboro, and it has a very nice diner serving meals up to as late as 10:00 or 11:00 o'clock P.M. It is available when the 38 arrives at Greensboro about 8:20.

By Mr. Burns:

Q. When does that train leave Greensboro?

A. 8:38.

Q. That would be the earliest time which someone could get food?

A. They could be served as soon as it arrives at Greensboro, which is 8:33. I think it comes in a little earlier than that.

Q. Unless you want to wait until 8:30 to eat, though, you have got to make some other arrangements, other than what is provided by the railroad?

A. Well, I was just saying, when I went into the diner I had to wait for a place to sit, because it was crowded with people eating at that time of the evening. Apparently it's a good time.

Q. What time did you get a seat?

[fol. 289] A. Five minutes after I went in there.

Q. What time was that, now?

A. About 8:25.

Q. The people that prefer to eat, and you do recognize that some people prefer to eat earlier than that, do you not?

A. Some people might want to eat at 3:00. I would eat before the train left, in some cases. It depends on when you want to eat. There wouldn't be anything wrong with eating before you left Durham. Many do.

Q. Do you think that they do that as a matter of convenience?

A. Their own convenience, I would say. They probably want to eat with their family.

Q. I believe in the last case you testified that you had received some reports indicating that Durham was the worst passenger station in the state of North Carolina, as judged by the inspectors of the North Carolina Utilities Commission, is that not right?

A. There were some reports or conditions in the past, and I didn't agree that it was the worst in North Carolina. The report had a certain point system on it, which would indicate that they had found certain exceptions in the station at Durham.

Q. Whether or not you agreed with it, that was the conclusion that was reached by the Commission, was it not?

A. I think the Commission indicated such.

[fol. 290] Q. What have you done in the way of painting or repairing the Durham station, to improve it since the last year?

A. I don't know of anything that has been needed or done.

Q. Is Durham still the worst station?

A. No, sir.

Q. The fact is that Durham has stayed constant, has it not, and Burlington and Greensboro have now dropped below where Durham was at the last hearing, isn't that the truth?

A. I don't think so.

Q. Is Mr. Shu here today?

A. Yes, sir, he's here.

Q. Which one is he? I would like to meet him.

Now, is Mr. Shu to your knowledge one of the witnesses that were sworn in a minute ago, to testify in this case?

A. No, sir.

Q. He is not?

A. No.

Q. He won't be available to be questioned about the stations and their condition?

Exam. Gibbons: He is available for questioning if he is here. He may be put on and interrogated.

Mr. Burns: Of the stations of Southern Railway—let me strike that, and ask you this way— If it should later develop in this proceeding that the station at Greensboro, North Carolina has the lowest rating of any railroad passenger station in the state, in May of 1961, and that the station at Durham is the next lowest station in the state, and that the station at Raleigh is the next lowest station in this state, and that the station at Burlington is the next lowest station in the state, would you as an official of Southern Railway become somewhat concerned about the conditions that face passengers on this particular trip?

A. I haven't seen the reports, Mr. Burns, but I have been in all of those stations during the past few months, including last week, and I saw nothing in those stations unsanitary or unsatisfactory, as far as my opinion is concerned.

Q. You do not ask to see the reports of the inspectors of the Utilities Commission, about the cleanliness of those stations?

A. I have not seen them, no, since we have had the hearing, but I have inspected the stations regularly since then.

Q. Now do you have some sort of instructions out for Mr. Shu to report to you anytime a station falls below what the Utilities Commission thinks it should be?

A. No, sir.

Q. You don't care about it?

A. Mr. Shu has his responsibility to give such attention that is necessary in connection with any complaints that are made about the passenger stations.

Q. Were there complaints made—there were complaints [fol. 292] made in the last case, were there not?

A. It was discussed. I don't recall any complaints; I recall that the report was submitted, and a lot of comment about the stations—there were comments about the stations—I still didn't see anything unsanitary about the stations then or now.

Q. Are you going to be here at the conclusion of this hearing, after we have had a chance to put on witnesses to identify official records of the North Carolina Utilities Commission?

A. Yes, sir.

Q. Who is Mr.—well, let me rephrase the question—Are the station managers or agents directed to send reports of sanitary conditions of the stations to Mr. Shu who is the Division Superintendent?

A. He receives them, yes, sir.

Q. What does he do with them?

A. I believe I answered that question. When he gets the report he makes whatever correction is necessary.

Q. Are you through?

A. Yes.

Q. Nobody else in the hierarchy of Southern Railway seems that he carries out his duties?

A. I just told you that the station is checked by other officers of the company, including myself, and of course [fol. 293] anything I saw in a station that was unsanitary I would call it to the attention of the Superintendent.

Q. The fact that others may report that the station needs a good cleaning with soap and water would not be of particular interest to you if you didn't think it needed a good cleaning with soap and water?

A. I didn't say that.

Q. Would such a report be of interest to you?

A. Yes, it would be of interest.

Q. Would a report that a station is in need of a general cleaning be of interest to you?

A. We welcome any reports in connection with the conditions of our stations.

Q. Well, why don't you do something about them when you get them from the officials of the North Carolina Utilities Commission?

A. What are you referring to?

Q. When you get reports or statements like these, why don't you do something about them?

A. Which statement are you referring to? What conditions are you talking about?

Q. It is awfully hard to ask you these questions without putting reports before you and showing them to you.

A. Yes.

Q. If a report from an inspector from the Utilities Commission [fol. 294] were to say something to this effect:

"That a general cleaning of soap and water would help, but a coat of paint would be much better," that would not be of particular interest to you?

A. Yes, it would.

Q. Would you try to see that the soap and water were used, if you couldn't afford the paint?

A. Yes, sir. They are used.

Q. If another report were to provide that a station is in need of a general cleaning, a coat of paint would help very much, would that report be of interest to you?

A. Yes, sir.

Q. Would you think that Mr. Shu should call such reports as that to your attention?

A. No, sir.

Q. He just ought to go ahead and do it?

A. He would.

Q. What if he doesn't do it? What is your responsibility in that connection?

A. I would probably see it sometime on passing there and call it to his attention.

Q. You are not interested in seeing the actual reports, though?

A. I have seen them.

Q. Some of your stations are rated as poor stations. You wouldn't be concerned about that either, I take it?

[fol. 295] A. I don't recall rating one as a poor station recently.

Q. Well, I'll ask you to accept, subject to check, that the Burlington, North Carolina station was rated in poor condition on June 14, 1961. Do you accept that check?

A. I checked the station on June 20 and I did not consider it unsanitary in any way.

Q. Do you think that they got to work and did a little cleaning with that soap and water?

A. I don't know. They clean it very frequently, probably daily.

Q. I believe that's all. That's all the questions I have at this time. Mr. Bryant has questions on a subject I did not cover.

By Mr. Bryant:

Q. Mr. Waters, the western terminal of these two trains, 13 and 16, I believe is at Greensboro?

A. Yes, sir.

Q. And the eastern terminal is at Goldsboro?

A. That is right.

Q. And the train route runs therefore generally east and west?

A. Yes, generally.

Q. Now the route from Greensboro to Goldsboro lies entirely within the state of North Carolina, does it not?

A. Yes, sir.

Q. And no part of the operation of the train from Greens-
[fol. 296] boro to Goldsboro is outside of the state of North Carolina?

A. The Durham, New York sleeper is interstate, operating to New York and several other states.

Q. I understand that, but no part of this route is outside of the state of North Carolina?

A. Our rail from Greensboro to Goldsboro is entirely within the state of North Carolina.

Q. Therefore, I assume that you would answer that no part of the route from Greensboro to Goldsboro is outside of the state of North Carolina?

A. I answered the question. The route includes many interstate movements.

Q. Would you answer the question, please, if any part of the route from Greensboro to Goldsboro is outside the state of North Carolina?

A. I believe I answered the question by saying that our railroad from Greensboro to Goldsboro is all within the state of North Carolina.

Q. Once again I am going to put the question, and ask you to answer yes or no as to whether any part of the route from Greensboro to Goldsboro is outside of the state of North Carolina?

A. Are you speaking of the Southern Railway route?

Q. Yes, sir.

A. Yes, it's in the state of North Carolina.

[fol. 297] Q. What generally are your duties? I am not sure that I understood just what part of the operation of the Southern Railroad came under your duties?

A. I have general supervision of passengers and freight service.

Q. Over what area, Mr. Waters?

A. Southern Railway System.

Q. That is the entire system?

A. Right.

Q. And that, of course, would mean that you have the general supervision of the passenger and freight service in the area for these two trains?

A. Yes.

Q. Is it a part of your duty to generate passenger and freight service for the Southern Railroad in this area?

A. I have responsibility and duties in connection with providing this service; other employees are responsible for soliciting. I wouldn't solicit, but I would hope they would ride our railway.

Q. Do you solicit freight business, Mr. Waters?

A. That is not my assignment, to solicit freight business, but I do solicit freight business.

Q. Do you also solicit passenger business on this route from Greensboro to Goldsboro?

A. That is not my assignment, but I would certainly be [fol. 298] glad for anybody to ride our trains.

Q. Whose assignment is it, to solicit passengers from Greensboro to Goldsboro and from Goldsboro to Greensboro?

A. The officers of the passenger department.

Q. What are their names?

A. Mr. D. H. Beck is representing us here. He will be a witness at the hearing to testify.

Q. What is his official title?

A. He is General Traffic Manager of the Southern Railway System.

Q. Now, Mr. Waters, in the organization set up by Southern Railway Company, to whom do you report about passenger matters?

A. I report to Mr. K. C. Schultz, Assistant Vice President in Washington.

Q. I am sorry; I did not get his name. K. C. what?

A. Schults. S-e-h-u-l-t-s.

Q. Do you know whether the Southern does any advertising or has done any advertising for passengers on this Greensboro-Goldsboro route, since the hearing in this case?

A. No, sir. I do not, but Mr. Beck can answer that question. He will be available later.

Q. Does it come within your jurisdiction to see that janitorial service is provided at these stations between Greensboro and Goldsboro?

[fol. 299] A. I believe I explained that before, sir. I make inspections of stations and do handle that if I see that something is unsatisfactory.

Q. Maybe I did not make my question clear. I intended to direct it more providing, or to see that janitorial service was provided; within whose jurisdiction does that come, yours?

A. In the first place, it would be the responsibility of the agent at the station to have this provided, and the agent reports to the Superintendent.

Q. And then the Superintendent to you?

A. Well, he reports it to the General Officers of the Company, of which I am one.

Q. Can you tell us, sir, what janitorial service is provided at the Durham station?

A. Yes, sir.

Q. What?

A. We have a porter there that provides janitorial service at the station, seven days a week.

Q. Do you know what hours he is on duty?

A. Yes, sir.

Q. Kindly let us have that information?

A. Seven to nine A.M. and four to six P.M.

Q. Four hours a day?

A. That's right.

[fol. 300] Q. Other than for those hours, what—that's the one janitor, I believe you have?

A. That's all we need.

Q. Now what other employees do you have for the Durham station?

A. We have a ticket agent seven days a week.

Q. And what are the hours for the ticket agent?

A. Nine A.M. to six P.M.

Q. In other words, you have one agent on duty continuously from nine a.m. to six p.m.?

A. She works eight hours, has a lunch period.

Q. Other than the lunch period now, you say she's on duty. Now, are there any other employees for the Durham station, other than the porter and the ticket agent?

A. That is all.

Q. What time does the eastbound train, is that no. 13 or 16, the eastbound train?

A. 16.

Q. What time does no. 16 get,—is no. 16 scheduled to arrive in Durham?

A. 7:55.

Q. And to depart?

A. 8:10.

Q. So that the only person on duty at that time is the porter?

[fol. 301] A. He's the only employee in the station on duty.

Q. Who is the only one there who would be in a position to furnish any information about train schedules or departures prior to 9:00 o'clock?

A. We have other employees at Durham, an agent and others who the ticket clerk reports to, on hand. We have a bulletin board there, that has a schedule of the trains.

Q. Aren't they all at the freight station?

A. The agent is all over the place, the freight station, in the yard. He is the general supervisor. He meets the train almost every day, and the assistant agent, he meets it too, very often.

Q. Mr. Waters, do you know whether any money has been spent at all, in the repair or renovation or maintenance of the Durham Railway Station since the last hearing in this matter?

A. No, sir, I do not.

Q. Do you know whether there has been, to your knowledge, any advertisement with reference to the passenger service in or out of Durham, since the last hearing?

A. No, sir, but Mr. Beck can answer that question definitely.

Q. I'd like to ask you, Mr. Waters, if you have discussed the operation of these, the continuous operation of these passenger trains with Mr. K. C. Schults?

A. Yes, sir.

[fol. 302] Q. And I ask you, sir, if it is not the definite and planned policy, and hasn't it been the planned policy of the Southern Railway Company, since the hearing in this matter, to do whatever it could to make these trains unpopular, and to force a discontinuance of these trains?

A. No, sir. No such plan.

Q. All right. What has it done in order to make them more popular or more desirable, as a mode of travel, since the date of the hearing before the Utilities Commission?

A. We are providing good service, on time operation, air-conditioned cars.

Q. Don't you know, as a matter of fact, that you have stopped air conditioning in the cars, prior to the time the train came in, and up until about the time of the hearing before the Utilities Commission that you did pre-air-condition those cars?

A. The cars are being air-conditioned.

Q. That isn't answering my question. I am asking you if you don't know, as a fact, that since the date of the hearing before the Utilities Commission, that you have stopped pre-air-conditioning those cars before they were hooked up on the train?

A. No, sir. It hasn't been stopped. It might have been a day or two intermittently, when they were not pre-cooled, but as far as I know, there has always been a time when [fol. 303] they had some mechanical failure, but there is no plan to discontinue pre-cooling the cars.

Q. I asked you, sir, that since the train came in April up until yesterday that there was no pre-cooling of this car in Raleigh?

A. I will say that I checked on it yesterday, and it was pre-cooled yesterday.

Q. Do you know whether it was pre-cooled at any time between April and yesterday?

A. I don't think I have checked it during that time, but I have certainly had no complaint about failure to cool cars.

Q. Don't you know that orders that were given—

A. No such orders.

Q. Did you make any inspection yesterday of the methods of pre-cooling the car, and facilities for pre-cooling it?

A. Yes, sir.

Q. Didn't you find only yesterday that a plug was broken and that the car could not be pre-cooled until that was fixed?

A. No, sir.

Q. Now I ask you if you don't know that that had been the condition since April?

A. The cooling facilities at the station at Raleigh have been operated continuously since the last hearing.

[fol. 304] Q. And you say that you found nothing wrong with the cooling facilities yesterday when you inspected them?

A. I might qualify that by saying that we have two different stand-by plugs at Raleigh, and one of them has been out of order, and the other one is working.

Q. For how long?

A. I don't know how long it has been—two or three months.

Q. The one that was working, was it where they park freight cars?

A. That's the regular place to park cars, over there where the plug was.

Q. None was available until yesterday for pre-cooling the passenger cars?

A. The one in front of the station, the regular place to park the cars, the only location where they have steam facilities, and the facilities there have not been out of order.

Q. Without belaboring that point, let me get back to my question. Tell us, please, what the Southern has done, if anything, since the last hearing before the Utilities Commission, that was done to improve the passenger service and to make passenger service on these trains more desirable?

A. We have improved our schedule to New York. You get in there at eight o'clock a.m. instead of nine o'clock a.m.

Q. All right. What else?

[fol. 305] Q. Can you name me one other thing?

A. On time trains.

Q. Didn't they run on time before?

A. Yes.

Q. Can you tell me of any money that has been spent on any of the other stations, I have asked you about Durham, between Greensboro and Goldsboro, including those two places, on the passenger trains since the last hearing?

A. No, sir, I don't know anywhere where they needed any money spent. I told you I inspect the stations from time to time. I haven't seen any place where they need any money spent.

Q. And you tell us now, since the hearing before the Utilities Commission, you have not taken pains to secure the reports of the North Carolina Utilities Commission on the conditions of the stations along this route. Is that correct?

A. I have discussed it with the division officers, and made personal inspections of the stations since then, but I have not seen the reports.

Q. I submit though, that the question I want to ask you, is that after, have you had them obtained?

A. I haven't seen the reports; I inquired of the Superintendent about them; I have discussed them.

Q. Do you know whether he saw them or not?

[fol. 306] A. The trainmaster said he saw them.

Q. Mr. Shu I am talking about, Do you know whether Mr. Shu saw the reports?

A. Yes, he saw them.

Q. I assume then that he saw the reports as a part of his official duty?

A. That's his job.

Q. He would be here to answer questions as to what he did with the reports, if anything. To answer questions as to—

Mr. Waters, who in your organization keeps a record of the financial operation of these trains, at the present time?

A. The Accounting Department.

Q. And who is the head of that department?

A. Mr. Gleason is representing us here.

Q. Is Mr. Gleason here to testify on that point?

A. Yes, sir.

Q. That I assume does not come within your jurisdiction?

A. That's right.

Q. I believe that's all I have to ask the witness, Your Honor.

Exam. Gibbons: Further cross?

Mr. Holton: Mr. Waters, I believe you said that you had ten men losing jobs in case these two trains are discontinued?

[fol. 307] A. I said there were ten men assigned to these runs, who will have other jobs that will pay as much as they are now making.

By Mr. Holton:

Q. Will you explain the operation of seniority on the *railroads? Are you going to have someone appear, that will explain that particular item?

A. I'll answer the question.

Q. In case the train should be discontinued, you say these men will have just as good jobs or better jobs?

A. They will have jobs that pay as much or more.

Q. What happens to the men that they displace?

A. You are familiar with the seniority system, I presume. These men are all old heads, and they will displace other men who will displace other men, and the final analysis, it might be that some men at the end would be furloughed, depending on business conditions, vacations, and many other aspects.

Q. You would have ten men that would be cut back from regular jobs to part time work?

A. It could be, but not definitely.

Q. If you displace ten automatically, as you would go down, ten more—

A. The employment on the railroad fluctuates from time to time, as to business levels. It might be that—some of them, I suppose, will retire. Three of them probably can [fol. 308] retire.

Q. In the event that this train should be in operation on October 1, do you anticipate that these men that you are

referring to, should retire between now and October 1, or July 1, or what month?

A. I don't know when they are going to retire. I know I made a check down here, and since then one of them has retired.

Q. But it was a full crew on there yesterday?

A. It was a full crew.

Q. And since the study has been made, there has been one man to retire?

A. Since I first checked on it, there has been one to retire and there is still three—

Q. What happens to the pullman crew on there?

A. I am not working for the pullman company, but the conductor is eligible for retirement, so he told me, and he stands for other work.

Q. Does the pullman conductor and a pullman porter work on the pullman car, is that correct?

A. Yes.

Q. Now, that would be twelve men?

A. I was referring to Southern Railway men when I made my statement.

Q. Do you have any other agent in Durham, besides the [fol. 309] lady ticket agent there?

A. We have two other agents.

Q. Where will they go, in case there are no more tickets to sell?

A. You mean the two employees at the station, they will be furloughed; they are both experienced people, and it might be that other work can be found for them. They do not hold seniority anywhere else on the railroad.

Q. You used the term, "other work could be found," just what do you mean?

A. Well, for instance, this ticket clerk is an experienced ticket clerk, and we have extra work, vacation work, and it might be that a place can be found for her. We will certainly consider her for any work we have.

Q. Are you saying that in the event these trains would be discontinued, that no employee will be in a worse condition?

A. I didn't say that.

I said that these ten train service employees on this train would stand for work that would be paid as much or

more than they are now making, and three of them stand for retirement. The pullman conductor also stands for retirement.

Q. I believe that's all, sir.

Exam. Gibbons: Further cross.

By Mr. Burton:

Q. I represent the Railway Executives Association. You [fol. 310] have dwelt on two employees at Durham, what effect would it have on the station employees and ticket agents at Goldsboro, Selma, Raleigh, and any other stations on this Goldsboro to Greensboro division. I don't believe you brought that out.

A. The station at Goldsboro is operated by the Coastline. What action they will take in connection with this movement, I do not know, but as far as our own railroad is concerned, there is only one other position that we think will be furloughed when the train comes off, and that is the operator at Burlington, and he stands for a pension and has made a statement that he will retire when the job is cut off.

Q. Two at Durham and one at Burlington, and you don't have anyone at Selma that would be affected by this?

A. Selma is a Coastline operation, and I am not familiar with the Coastline plans of what reductions they will make, if any.

Q. In the overall picture, there will be thirteen employees that will be adversely affected by the discontinuance of this train. Ten train crewmen, oh, it would be more than that; it would be fifteen. Ten train crewmen, two pullman employees, and two at Durham and one at Burlington.

A. I didn't say anyone would be adversely affected. I said that these ten crewmen, when these jobs were cut off, they would stand for jobs that pay more money, as much or [fol. 311] more, and the operator at Burlington he said he would retire, so he won't be adversely affected, and the two at Durham will be furloughed, and I believe I explained their status.

Q. Are you familiar with the seniority procedure on the railroad same as I am, and you know that somebody is going

to be out of a job as a result of ten or thirteen people falling back in seniority order. It goes to the bottom of the totem pole, so they are going to be out of regular employment. Is that right?

A. Could be, but may not be. It depends on the business level.

Q. If business picked up and you had the other people working, these people still would be affected?

A. There are people retiring almost every few days, and probably some of these fellows will retire. They won't roll anybody. If they retire they won't be working.

Q. That's a probability, but the reality proposition is that somebody is going to be out of employment?

A. You asked me if they would be adversely affected. I didn't agree that they would be, because they may not be.

Q. But you can't guarantee that they won't be.

A. I wouldn't guarantee it.

Q. That's all.

By Mr. Carnes:

Q. Mr. Waters, I believe you said that there are three men, that are on the train operating crew that are eligible [fol. 312] for retirement?

A. Yes, sir.

Q. Just what do you mean by that—do you mean that they are sixty-five years old or older or what do you mean?

A. They are sixty-five or older.

Q. Now in the Southern Railway System, do you know whether or not they have a forced retirement age limit in effect, the Southern Railroad?

A. For some employees, yes.

Q. Do you know whether the operating crew has a forced age limit?

A. The conductors and trainmen.

Q. How about the engineers and firemen?

A. No, sir.

Q. Now, these three men that are eligible, do you know who they are?

A. Yes, sir.

Q. Would you state who they are?

A. J. B. McClintock, age 69. He is an engineer.

W. E. Cheek, Conductor, age 67.

L. B. Strayhorn, Engineer, age 66.

Q. I believe Mr. McClintock and Mr. Strayhorn are engineers on 13 and 16, is that right?

A. Yes.

Q. You are only assuming that they might take their [fol. 313] retirement if these trains are discontinued, is that right, Mr. Waters?

A. They are eligible for retirement.

Q. But you don't know, you haven't talked with them, have you?

A. I haven't talked with them about that, no, sir.

Q. That's all.

Exam. Gibbons: Any further questions?

(No response.)

The witness may be excused. We will take a very brief recess at this point.

(Witness excused.)

(Off the record.)

(Recess taken.)

Exam. Gibbons: Back on the record.

(On the record.)

Mr. Eisenhart: Mr. Cruise, please. Mr. Examiner, I am putting Mr. Cruise on, and one or two other witnesses at this time, although it breaks the continuity of our case, because they are non-company-witnesses, and have to leave in a short time, and I would rather that they would get on this morning before we adjourn.

AARON CRUISE was duly sworn and testified as follows:

Direct examination.

By Mr. Eisenhart:

Q. Mr. Cruise, would you give your name, address and [fol. 314] occupation?

A. Aaron Cruise, Raleigh, North Carolina, Assistant Traffic Manager of Carolina Coach Company.

Q. How long have you been employed?

A. Thirteen years.

Q. How long have you been employed by them in Raleigh?

A. Twelve years.

Q. What operations are conducted by the Carolina Coach Company in the territory served by trains 13 and 16, between Greensboro and Goldsboro?

A. We operate between Greensboro and Raleigh.

Q. How many schedules a day do you operate between Greensboro and Raleigh?

A. We operate fifteen round trips daily, plus one round trip on week-ends.

Q. This is sixteen round trips on week-ends?

A. Yes.

Q. Do you have connecting arrangements for service with other bus lines?

A. We do.

Q. Do you have any operations east of Raleigh?

A. We operate east of Raleigh through Wilson, to Little Washington, North Carolina, and Rocky Mount into Norfolk. We do not operate between Raleigh and Goldsboro.

Q. Do you have any connections that operate between [fol. 315] Raleigh and Goldsboro?

A. Yes, sir. The Seashore Transportation Company and The Southern Greyhound Lines, both operate between Raleigh and Goldsboro. We operate one through schedule daily round trip between Greensboro and Goldsboro, in conjunction with Seashore Transportation Company.

Q. What sort of equipment do you maintain on your runs, Mr. Cruise?

A. We operate general motors buses, regular scheduled

Q

buses. The newer models have air conditioning and restaurants.

Q. Are you in a position to observe any more traffic on your schedules?

A. Yes, sir, we are. We have forty-nine extra buses in this area, that are available for service. Our present schedule, many of them are between Raleigh and Greensboro, are operating at less than cost now, indicating passenger volume very low.

Q. Where do you base your extra buses?

A. The majority of them for this area are in Raleigh. Others are in Greensboro, Charlotte—

Q. Are they available if there should be crowded conditions on your regular equipment on week-ends or holidays or at any other time?

A. They are, sir.

[fol. 316] Q. Do you provide charter service?

A. We do, sir.

Q. What is the bus fare, Mr. Cruise?

A. Our fares in this area are based on three cents per mile per one way, adult passengers.

Q. You have round trip fares?

A. We do. They are 180% of the one way fare.

Q. Mr. Cruise is offered as a witness on the availability of competitive service. That's all the questions I have of him and tender him for cross examination.

Exam. Gibbons: Cross examination is in order.

Cross examination.

By Mr. Burns:

Q. Mr. Cruise, I think you said you work for Carolina Coach Company?

A. Yes, sir.

Q. You are familiar, of course, with all of the schedules of that company, is that right?

A. Yes, sir.

Q. Are you familiar with bus schedules of other carriers operating between Greensboro and Goldsboro?

A. Generally, yes.

Q. Do you know of any bus company that operates service from Burlington, North Carolina in a northward direction?

A. By northward?

Q. Towards Washington, New York, Philadelphia?

[fol. 317] A. We operate a service out of Burlington to Norfolk; it operates either through Greensboro or Raleigh.

Q. In other words, you go to Greensboro, change buses in Greensboro for northbound service?

A. Yes, sir.

Q. There is no direct service from Burlington to Washington, is there?

A. Without a change of bus, no.

Q. There is also no direct service from Durham to Washington?

A. Yes, sir, there is.

Q. There is? Where is that service?

A. That service is operated out of Durham by our company, via Raleigh, Richmond, and from Richmond north it is operated by other companies in the railway system.

Q. In other words, you come from Durham to Raleigh and then go to Richmond, is that correct?

A. That is our service.

Greyhound Lines, Southern Greyhound Lines Division operates from Durham to Richmond, Washington and New York through Oxford and Henderson.

Q. In other words, you change there?

A. No, I am speaking of through service without changing bus.

Q. Those same buses that you mentioned, would they also [fol. 318] serve points like Elon College and places like that?

A. The through buses from Durham, that I have just mentioned do not serve Elon College.

Q. The through buses do not stop at all the intermediate points, say between Greensboro and Burlington?

A. The through buses to Washington, D. C. and points north on this particular line would originate in Chapel Hill or Durham.

Q. In other words, the bus does not go to Burlington?

A. This through bus doesn't go to Burlington.

Q. Did I understand you to say that your bus company

does not operate east of Raleigh, except on the one round trip per day to Goldsboro, and on a route from Raleigh to Little Washington, North Carolina?

A. We operate out of Raleigh east to Little Washington by Wilson and Greenville to Little Washington, and through Rocky Mount, Williamston, and Elizabeth City, Rocky Mount and Scotland Neck into Norfolk. We do not operate from Raleigh to Goldsboro. There is a through bus from Greensboro to Goldsboro. It is operated by Carolina Coach Company between Greensboro and Raleigh and Seashore Transportation Company between Raleigh and Goldsboro. It is a leased equipment arrangement.

Q. And on the through buses you have mentioned, they do not stop at intermediate stops, such as McLeansville, Gib-
[fol. 319] sonville, Elon College, Graham, Haw River, Mebane, Efland, Chapel Hill?

A. I have just mentioned the through bus from Greensboro to Goldsboro. That stops at Sedalia, Gibsonville, Elon College, Burlington, Graham, Haw River, Mebane, Efland, Hillsboro, Durham, Morrisville and Cary and Raleigh.

Q. And then Raleigh on the other side?

A. Between Raleigh and Goldsboro, the only time that it makes a stop is at Smithfield.

Q. Is your company proud of the service it renders?

A. Yes, sir.

Q. Do you think it is first class passenger service?

A. We do, sir.

Q. You are always working to improve it?

A. We are, sir.

Q. Are you trying to compete with the railroads for passengers?

A. Yes. We are competitive with the railroads.

Q. Do you advertise your schedules in the newspaper?

A. We do.

Q. That's for the purpose of informing the public as to when the buses leave and where they go?

A. We do not advertise individual time tables in the newspapers. There's too many of them. We advertise our service in the newspaper.

[fol. 320] Q. I think that I have some recollection that your company, along with several other companies, ex-

pressed some concern about the operation of union stations in this state, from time to time. Is that correct?

A. We were involved in a hearing on that subject. I don't know that our company was expressing concern. It was other companies that brought the hearing about.

Q. Your company, I believe, sought to improve the union station facilities that are available?

A. No. Generally our position was that the present set up was reasonable and good, and should be continued.

Q. Your company does seek to improve the services provided at the stations?

A. Yes, sir.

Q. By the way, does your—do your stations have eating establishments in them?

A. The larger stations do.

Q. Burlington, for example?

A. No, sir. Burlington does not.

Q. How about Greensboro?

A. Greensboro does.

Q. Isn't it a fact that there is an eating establishment adjoining the station at Burlington?

A. There was the last time I was in Burlington, very recently. I am sure it is still there.

[fol. 321] Q. It was the last time I rode that bus, too. There is one in Durham?

A. There is.

Q. There is one here in Raleigh?

A. Yes.

Q. That's all the questions I have.

By Mr. Bryant:

Q. Mr. Cruise, you have had twelve or thirteen years experience in the traffic management division of Carolina Coach Company here in Raleigh, I believe?

A. Yes, sir.

Q. In addition to being familiar with the motor coach services offered in certain areas of North Carolina, you also are generally familiar with the rail passenger services offered in those same areas?

A. Just in a general way.

Q. Now it has been testified, and I, of course, assume to be a fact that generally speaking, this route from Greensboro to Goldsboro runs in an west-east direction or an east-west direction?

A. Yes.

Q. If that passenger rail service was eliminated, I ask you whether there would be any passenger rail service in North Carolina, running east and west looking eastward from Greensboro?

A. I don't know of any service other than that.

[fol. 322] Q. Now Greensboro is approximately at the center of the state of North Carolina, or maybe just slightly west of the east-west center of the state, is it not?

A. About, yes.

Q. And if you were to eliminate this rail passenger service east of Greensboro on trains 13 and 16, is it not a fact that that would leave an area east of Greensboro in the state of North Carolina, with a population of approximately 2 million people, without any east-west rail passenger service?

A. That's probably right.

Q. If a man wanted to go to New York, say a passenger wanted to go to New York, Philadelphia or Washington to transact business, and this pullman car on trains 13 and 16 were eliminated, the only way that he could reach there by any public means of transportation would be either by plane or by bus, would it not?

A. I believe—from what point of origin are you speaking of?

Q. I should have pinpointed it between Greensboro and Goldsboro—say, Durham, I am asking about specifically. He would have to take a plane or motor coach, wouldn't he?

A. From Durham that's all I know of.

Q. If he took the service which you offer, that would mean if he left Durham in the afternoon in order to get to Philadelphia, New York or Washington to transact business, he would have to ride the motor coach all night, wouldn't he?

A. If he left in the late afternoon.

Q. Do you have a motor coach leaving Durham for New

York, or is there such a service available by motor coach leaving Durham in the late afternoon?

A. Yes, sir.

Q. Do you know what time that would arrive in New York?

A. We have a through bus out of Durham, leaving Durham at 5:15 P.M. Eastern Standard Time, and arrives in New York at 5:50 Daylight Saving Time.

Q. I believe that would be 4:15 on Standard Time?

A. Yes, sir.

Q. And if he rode the coach all night and attempted to transact business in New York, let us say that day, and then wanted to come back to Durham after the completion of business on the afternoon, I suppose he could leave by motor coach from New York, and arrive back in Durham after sitting up on the coach all night, couldn't he?

A. He could, sir.

Q. What time would he get into Durham?

A. Well, if he left New York at 8:30 P.M. Eastern Daylight Time he would be in Durham at 7:35 A.M. Eastern Standard Time.

[fol. 324] Q. So a man coming from that direction, who wanted to transact business in Durham, if he took the coach could get there by coach by sitting up all night?

A. Yes, sir.

Q. I believe that's all I wanted to ask you, sir.

Exam. Gibbons: Further cross examination?

By Mr. Graham:

Q. Mr. Cruise, in view of your experience and the type business in which you are engaged, the matter of the discontinuance of what amounts to a competitive carrier is not one that's calculated to fill you with very grave misgivings, is it?

A. No, sir.

Q. That's all, sir.

Exam. Gibbons: Further cross examination?

(No response.)

Exam. Gibbons: Mr. Cruise, you are familiar with all of the towns which are served by the trains in the subject of this proceeding?

The Witness: Yes, sir.

Exam. Gibbons: Including Greensboro and Raleigh, how many of the towns that are served by trains are not served by bus?

The Witness: There is the village of McLeansville, which is about two miles from—

And then there is a place called Glen, which is on the railroad, but not on the busline, and it's not very far, I [fol. 325] don't know exactly.

Exam. Gibbons: Are those the only two then that do not have bus service?

The Witness: That is correct.

Exam. Gibbons: Between Greensboro and Raleigh?

The Witness: Yes.

Exam. Gibbons: Now, between Raleigh and Goldsboro, how many towns that are served by the trains do not have bus service?

The Witness: On the rail schedule, there is a place called Rose that is not on the bus timetables, and I don't know whether the buses go through there or not. I am not familiar with that place. I believe it's a very very small place, but other than that—

Exam. Gibbons: Is that the only one?

The Witness: Yes.

Exam. Gibbons: Does that mean then that all of the cities, except the one that you mentioned between Raleigh and Goldsboro, have daily bus service?

The Witness: Yes, sir.

Exam. Gibbons: Is that also true between Greensboro?

The Witness: Yes, sir.

Exam. Gibbons: You mentioned fifteen round trips a day between Greensboro and Raleigh, the bus service between Raleigh and Goldsboro is not that frequent, is it? [fol. 326]

The Witness: There are eight round trips daily between Raleigh and Goldsboro.

Exam. Gibbons: Any further questions?

(No response.)

Exam. Gibbons: The witness may be excused.

(Witness excused.)

Exam. Gibbons: Call your next witness.

Mr. Eisenhart: Mr. Watson, please.

J. A. WATSON was duly sworn and testified as follows:

Direct examination.

By Mr. Eisenhart:

Q. Will you state your name, address and occupation, Mr. Watson?

A. James A. Watson, 1506 Euclid Road, Durham, North Carolina, Assistant Airport Manager of Raleigh-Durham Airport.

Q. How long have you been employed at the Raleigh-Durham Airport?

A. Four years.

Q. Mr. Watson, do you have a number of flights from the Raleigh-Durham Airport to Washington, D. C., during 1960 or any other period?

A. Yes, sir.

Q. Do you have it for 1960?

A. Yes, sir.

Q. Would you please state what that number is?

[fol. 327] **A.** Do I understand you to want the daily number of flights, or the total number for 1960?

Q. The daily number of flights from Raleigh-Durham to Washington?

A. At the present time, there are nine daily flights to Washington, D. C.

Q. At the present time?

A. Yes, sir.

Q. How many daily flights are there to New York from Raleigh-Durham?

A. There are eight.

Q. Are there also flights east—I mean westward from Raleigh-Durham?

A. Yes, sir.

Q. What principal cities are served from Raleigh-Durham on a westward basis?

A. Well, for instance, Kansas City. We have seven flights—

Q. Do you have flights to Chicago?

A. Yes, sir.

Q. How many?

A. Nine.

Q. How about Cincinnati?

A. I don't have Cincinnati, the total. I know that Cincinnati is served by one airline, I know, two flights per day; I am not sure about the other two airlines.

[fol. 328] Q. Do you have available the number of airline passengers from Raleigh-Durham airport during 1960, Mr. Watson?

A. Yes, sir. According to our figures, there were 134,836.

Q. Are those all commercial?

A. They are commercial passengers.

Q. Mr. Watson, is there some construction work being done at Raleigh-Durham at the present time?

A. Yes, sir, there is.

Q. What is that?

A. We are extending the main runway from 5500 feet to 7500 feet.

Q. What is the purpose of that extension of the runway?

A. We can take heavier aircraft, longer range aircraft in the jet class.

Q. During your time at Raleigh-Durham Airport, Mr. Watson, what has been your experience as to the airport being closed?

A. Well, as a matter of fact, the airport itself is never closed.

Q. Are flights sometimes delayed because of weather conditions?

A. Yes. We have brief periods of delay. Our experience has been that there have been no long periods of delay.

Q. When you say brief periods, approximately how long do you have in mind?

[fol. 329] A. Oh, several hours.

Q. During the past year have you had any period when you had delay of more than a day?

A. Not to my knowledge, no, sir.

Q. Did you ever have any as long as a day, during the past year?

A. Possible we had one day; I don't remember any more than one day during the past year.

Q. When you speak of a day, do you mean a 24 hour period or a 12 hour period?

A. 24 hour period.

Q. That is all I have, Mr. Watson.

Exam. Gibbons: Cross Examination is in order.

Cross examination.

By Mr. Burns:

Q. Mr. Watson, do you still take pride in your airport out there?

A. Yes, we do.

Q. Is it clean?

A. We think so. Yes, sir.

Q. Have you got a place to eat out there?

A. Yes, sir.

Q. As a matter of fact, you have a very fine cafeteria, do you not?

A. Yes, sir. A restaurant.

Q. Do you try to compete with the railroads out there for [fol. 330] passenger service?

A. I wouldn't say that we are actually competing with the railroad.

Q. In other words, you say that the airlines would not be helped or hurt by no rail passenger transportation?

A. Not appreciably; I wouldn't think so.

Q. Now you mentioned nine flights to Chicago. All of those flights except for one goes through some other point; there is only one direct flight to Chicago, is there not?

A. I would have to refer to the Eastern Air Lines schedule. I believe we have two flights that are non-stop.

Q. When was that flight introduced?

A. I couldn't tell you.

Q. Is it not often a fact that planes are supposed to land at Raleigh-Durham, take passengers when coming from the north to some place, say, to Charlotte, and then the

passengers are put on buses and brought back to Raleigh-Durham?

A. It's a very rare thing, sir.

Q. Isn't it a fact that they are sometimes taken in a northerly direction to such places as Richmond and deplaned there and brought back on buses or airport limousines?

A. It probably would happen on rare occasions.

Q. One of those rare occasions has been in the last thirty days, hasn't it?

[fol. 331] A. I do not know, sir. I am not there on a 24 hour basis, and something like that could occur at night, when I am not aware of it.

Q. In other words, your testimony is limited to the period that you are there?

A. Primarily, yes, sir.

Q. That's all the questions I have.

By Mr. Jones:

Q. Mr. Watson, just one or two questions I would like to ask you. I believe you work for the Raleigh-Durham Airport Authority?

A. Yes, sir.

Q. The Raleigh-Durham Airport Authority does not operate any airplanes?

A. No, sir.

Q. It merely operates the airport facilities?

A. Yes.

Q. In that airport, of course the various independent firms, such as Eastern Air Lines and Capital, United and these others operate their own planes?

A. Yes, sir.

Q. On schedules which they fix and which have been approved by the responsible government authorities?

A. Yes, sir.

Q. Each one of these airports, I mean airplane companies has its own, of course, its own management, its own [fol. 332] advertising and soliciting departments, and its operating personnel?

A. Yes, sir.

Q. Do you know, for instance, how much money the Eastern Air Lines has spent in the last twelve months, to solicit airplane travel over its planes in and out of the Raleigh-Durham airport?

A. No, sir, I do not.

Q. Do you know how much money the United Air Lines has spent, or Capital, for the last twelve months for that same purpose?

A. No, sir.

Q. Or any of these other airplane companies?

A. No, sir.

Q. As a matter of fact, they have spent quite considerable money for advertising, have they not?

Mr. Eisenhart: I object, Mr. Examiner. The witness has testified he didn't know.

Mr. Jones: I asked him how much. He said he didn't know how much.

Exam. Gibbons: The witness may answer, if he has an opinion. The objection is overruled.

By Mr. Jones:

Q. They have spent considerable money for advertising purposes, have they not?

A. I do know that they have advertised some of their airlines more than others.

[fol. 333] Q. And all of them do right much advertising, do they not?

A. There is one exception. One of the airlines in the past has not done very much advertising.

Q. But the others you say have?

A. The other two have, yes, sir.

Q. Do you know of any advertising that the Southern Railway Company has done in the last twelve months to solicit and attract anybody to ride its passenger train between Raleigh and Durham and Greensboro?

A. I cannot recall any specific advertising.

Q. Do you read the Durham papers?

A. When I have time.

Q. Do you recall seeing any advertisements in the Durham paper or in the Raleigh paper within the last twelve

months? Soliciting any passenger service for the Southern Railway?

A. I can't recall any.

Q. Do you look at television any?

A. Yes, sir.

Q. Have you seen any programs that have been put on or sponsored by this Southern Railway Company, to attract anybody to ride its passenger trains?

A. No, sir.

Q. I'll ask the same question with reference to radio—if you have heard any radio program sponsored by the [fol. 334] Southern Railway Company; which is designed to solicit or encourage anybody to ride its trains as a passenger?

A. No, sir.

Q. I believe the Raleigh-Durham Airport, of which you are Assistant Manager, has a very up to date restaurant, has it not?

A. We think so, yes, sir.

Q. The building itself, that is the airport building itself, is a relatively new building and is clean and comfortable, commodious for the traveling public, is it not?

A. Yes.

Q. The Raleigh-Durham Airport Authority also maintains large and adequate areas for the parking of automobiles next to its building or across the street from its building on its grounds, does it not?

A. Yes, sir.

Q. For the accommodation of people who come to the airport by automobile?

A. Yes, sir.

Q. Now, Mr. Watson, I believe the airlines had a strike sometime ago, last year, or in the Fall—Eastern and some of the others?

A. Yes, they have been on strike.

Q. I mean in the last couple of years?

A. Yes.

[fol. 335] Q. Didn't they have a right serious strike?

A. There was one approximately two years ago, I think.

Q. They refer to it as a "wildcat strike"; the fact is that it tied up the planes, didn't it?

A. Yes, sir.

Q. The "wildcat" one that I mentioned, that occurred within the last year, did it not?

A. There was a brief period of strike.

Q. How long were the planes grounded by virtue of that, at the Raleigh-Durham Airport?

A. I don't recall. It was several days.

Q. That was the most recent strike?

A. Yes, sir.

Q. The one before that, that I referred to at first, happened about two years ago, a year and a half ago?

A. Yes, sir.

Q. That was a right extended period of time when the planes were grounded, was it not?

A. Yes, sir—

Q. And it lasted about six weeks, didn't it, on that occasion?

A. The total time, possible of the two airlines, extended that long.

Q. During those periods to which you have referred, people of course, who might have been passengers on the [fol. 336] airlines had to use the service of the passenger trains, did they not, and other ways of travel?

A. I would think they would have.

Q. Do you know how many of them used the services of the Southern Railway Company during those periods?

A. No, sir.

Q. You may examine him.

By Mr. Bryant:

Q. One question, please.

If these two passenger trains, 13 and 16, were eliminated, is it not a fact, Mr. Watson, that the entire Durham area and the entire Chapel Hill area would be entirely without any rail passenger service of any kind?

A. I do not know, sir.

Q. Do you know of any?

A. No, sir. I wouldn't say that I am 100% familiar with the rail transportation.

Q. But you don't know of any?

A. No, sir.

Mr. Burns: I notice that you said you had 134,836 passengers during 1960, how many take offs did you have at the airport during the same period?

A. Well, the total number of all aircraft operations was 104,221.

Q. How many commercial?

A. 24,821.

[fol. 337] Q. In other words, you had approximately five people for every take-off, is that right? Every commercial take-off?

A. That appears to be approximately correct.

Q. Do you know whether the Southern Railway is doing better than that with its train out of Durham every day?

A. No, sir. I do not know.

Q. That's all the questions I have.

Exam. Gibbons: Any further questions?

(No response.)

EXAMINATION

Exam. Gibbons: Mr. Watson, you mentioned a number of flights from the Raleigh-Durham airport to the various cities mentioned: Is there an equal number of flights back from those cities, back to the Raleigh-Durham airport?

A. Yes, sir.

Q. Daily?

A. Yes, sir.

Q. There isn't any service at all, that is air service, between Greensboro and Goldsboro?

A. I don't believe so, not Goldsboro, sir.

Q. In other words, the only towns, cities that have air service are served by the trains, are Durham and Raleigh, is that correct. Or rather this airport is between Durham and Raleigh?

A. Yes, sir.

Q. It doesn't directly serve any of these cities except [fol. 338] Durham and Raleigh?

A. That's true; however Chapel Hill is within that area, too.

Q. How far is Chapel Hill from the airport?

A. Approximately seventeen miles.

Q. How far is the airport from Durham?

A. Twelve.

Q. How far from Raleigh?

A. Approximately twelve miles.

Q. It is almost equal distance from Chapel Hill, Raleigh and Durham?

A. Almost.

Exam. Gibbons: Any further questions?

Mr. Eisenhart: I have one question to clear up a matter on cross.

Redirect examination.

By Mr. Eisenhart:

Q. Mr. Watson, I believe Mr. Burns asked you how many take offs there from Raleigh-Durham and your answer was that there are 24,000 and some operations. Did you mean by operations' take offs, or did that include take offs and landings?

A. That's take offs and landings. An operation is a landing or take off.

Q. You meant take offs and landings?

A. Yes, sir.

Exam. Gibbons: Any further questions?

[fol. 339] (No response.)

Exam. Gibbons: If not, the witness may be excused. And I would like to, at this point, announce and have the record show that in accordance with an earlier off-the-record discussion and in accordance with an agreement with all parties, because of illness in the family of the Assistant Attorney General, we will at this point adjourn until 9:00 A.M. tomorrow morning, Wednesday morning.

(Whereupon, the hearing was adjourned at 12:00 Noon on Tuesday, July 11, 1961.)

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Supreme Court of the United States

October Term, 1963

No. 74

SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

NORTH CAROLINA, ET AL

No. 93

UNITED STATES, ET AL, APPELLANTS,

vs.

NORTH CAROLINA, ET AL

**APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NORTH CAROLINA**

NO. 94 FILED FEBRUARY 12, 1963

NO. 95 FILED MARCH 12, 1963

RECEIVED SECRETARY NOTED MAY 12, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

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[fol. 340]

Wednesday, July 12, 1961

HUGH McVAY was duly sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. Will you state your name, your residence and occupation, please?

A. My name is Hugh McVay; my residence is Post-Office Box 2467, Greensboro, North Carolina; I am Division Superintendent for the Railway Express Agency.

Q. What is the background of your Express experience?

A. Practically all of it has been in the Operating Department, over a period of 34 years.

Q. Do you have charge of the Express schedules, the matter of which express will be handled by REA on the line between Greensboro and Goldsboro?

A. Yes, sir.

Q. In the light of this proceeding, namely, the proposal of the Southern, that these trains be discontinued, have you prepared any plans or new schedules which would govern [fol. 341] the handling of express in the future if the trains came off?

A. Yes, sir.

Q. Do you have exhibits for showing that?

A. Yes, sir.

Q. Could we get them distributed?

A. I have two exhibits, Mr. Dixon, one of the present and one of the proposed order and service, if you would like to distribute one of each.

Q. If Mr. Eisenhart will do the honors.

May we have these identified?

Exam. Gibbons: The Present Schedule will be marked for identification as H 1, and the document described as Proposed Schedule, will be marked for identification as H 2.

(Exhibits H 1 and H 2, witness McVay, were marked for identification.)

By Mr. Dixon:

Q. Mr. McVay, referring to the Exhibit which has been identified as H 1, showing the present schedule of the Express company between Greensboro and Goldsboro—

A. Yes, sir.

Q. Are all of the schedules shown on that exhibit truck schedules?

A. Yes, sir, they are.

Q. I take it that in addition to those truck schedules presently effective, that you also handle some express on Trains 13 and 16?

A. We do.

[fol. 342] Q. Can you tell us the stations, the express stations that are worked by Trains 13 and 16?

A. Yes, sir, all stations between Greensboro and Goldsboro may be worked by 13 and 16, if needed. If we need to. We operate, as you know, by alternate service, by truck between Greensboro and Goldsboro. To identify stations that are exclusively served by 13 and 16, I can do that for you; leaving Greensboro first would be Gibsonville, and beyond Burlington, would be Haw River, Mebane, Hillsboro, Garner, Clayton, Pine Level, and Princeton, North Carolina.

Q. Now, those stations are served exclusively by the trains?

A. That is right. Those stations are not served by our present trucks.

Q. The remaining stations between Greensboro and Goldsboro are served by truck?

A. Yes, sir.

Q. Will you state those stations, coming east from Greensboro?

A. Burlington, Durham, Raleigh, and Goldsboro.

Q. I think you have an exhibit which shows the number of shipments at all of these stations, in the period March 1960 to February 1961, provided as between the monthly shipments and the number of shipments moving on Trains 13 and 16, do you not?

A. No.

Mr. Dixon: Mr. Examiner, can we identify that as H 3?
[fol. 343] Exam. Gibbons: It will be identified as Exhibit
H 3.

(Petitioner's Exhibit No. H 3, Witness McVay, was
marked for identification.)

By Mr. Dixon:

Q. What does that exhibit show, Mr. McVay?

A. This represents the average monthly shipments
handled at all of the offices between Greensboro and Golds-
boro, North Carolina, during the period of March, 1960,
through February 1961. It also indicates the shipments
handled exclusively identifying the offices by Trains 13 and
16.

Q. And what does that represent?

A. That represents four per cent of the total shipments
moved over that line.

Q. In other words, today, on this line between Greensboro
and Goldsboro, the trains are handling four per cent of
the total of the average number of express shipments?

A. That is right.

Q. And of course, the other 90% is already on your truck
line?

A. Yes, sir.

Q. And if the trains are discontinued, you would extend
your truck route, or broaden it to include the whole works?

A. Yes, sir.

Exam. Gibbons: Did I understand you to say that the
Trains 13 and 16 do not serve Durham or Raleigh; would
you like to express the handling of express?

The Witness: Perhaps I didn't make myself clear. Trains
[fol. 344] 13 and 16 and our trucks serve all of the offices
between the lines, is what I said. They do serve those
towns, if need be. In other words, service is available if
we want to use it.

Exam. Gibbons: I see.

Mr. Dixon: I'm not sure I heard that, but let me ask
you.

The Witness: To clarify it, Mr. Dixon, if I might, sir.
Nos. 13 and 16 does operate through Durham and Raleigh,

and if the occasion should demand it, we are privileged to put traffic on the train or bring traffic to it, if we should want to.

By Mr. Dixon:

Q. Now, the larger points on this line are Greensboro, Durham, Raleigh, Selma, and Goldsboro, and Burlington, is that true?

A. With the exception of Selma, I would say yes, that is true.

Q. After; as to these larger points, do you move your express by trucks or by rail?

A. Almost exclusively by truck.

Q. So that if the trains are discontinued, you just simply broaden that operation to include the smaller points?

A. Yes; I might clarify that, maybe, for you a little bit. For instance, Mr. Dixon, if a shipper at Clayton wanted to ship something to Durham, and I couldn't move it by truck because I don't presently serve Clayton with my [fol. 345] trucks; it would have to move to Durham, that particular piece would, by either of the trains.

Q. Is Clayton east or west of Durham?

A. That would be east of Durham.

Q. So you would move it by truck to Durham and put it on the train?

A. No; in that case, we would move it to Durham by train; if it were moving between Clayton and Durham only; since the truck would not serve Clayton, it could not be put on the truck. It would have to be put on the train.

Q. Suppose it was going to Chicago?

A. Most certainly, it would move over by truck, if from a point where we're serving by truck.

Q. We are talking about Clayton.

A. Clayton; if it moved to Chicago, we would take it to Greensboro.

Q. By truck?

A. No, sir.

Q. By rail?

A. By rail.

Q. It would go out of Greensboro? By rail?

A. By rail? It would go out either way, or air, whichever the shipper wanted it to go.

Exam. Gibbons: This Exhibit H 3 does show, however, that during the period March 1960 to February 1961, that [fol. 346] these trains did not handle any express in and out of Durham, is that what this exhibit shows?

A. Yes, sir.

Exam. Gibbons: Or Raleigh?

The Witness: That's right.

By Mr. Dixon:

Q. Or Selma or Goldsboro; is that right?

A. That's right.

Q. And Elon College and Burlington?

A. Elon College and Burlington are served exclusively by truck.

Exam. Gibbons: Why didn't you show any shipments to Greensboro?

The Witness: Well, Greensboro is an original point, and any shipments moving from Greensboro to these offices would automatically be included in these figures, and any moving from these offices to Greensboro would automatically be included in the following figures.

Exam. Gibbons: So that business in and out of Greensboro then, is reflected?

The Witness: Yes; business in and out would be reflected in the figures.

By Mr. Dixon:

Q. As an expert in the express business, would you say that the service proposed would be better or worse than that presently in effect?

Mr. Burns: Objection. We don't even know yet what the [fol. 347] service proposed is going to be; he hasn't said how he is going to take care of the fine North Carolina town of Clayton, we have been talking about. Or Graham, or any of these other towns. Until he says what his plan is, I don't think he is qualified.

Exam. Gibbons: I will sustain the objection, as to such time as the details—

By Mr. Dixon:

Q. Mr. McVay, referring to H. 2, do you have any express stations that have been left out of that exhibit?

A. Yes, sir.

Q. Can you tell us where they should be inserted; and explain the express company's proposal as to what it is?

A. Yes, sir. The express station at Cary, North Carolina.

Q. Where?

A. Cary. It is not shown on this proposed schedule. It is seven miles from Raleigh. The reason it is not shown on this schedule is that it is also served by the Seaboard Railway, and we have made an arrangement with the Seaboard people that if and when it becomes necessary to extend our truck service, we will serve that town exclusively by the Seaboard Railroad, and not by an extension of truck service, since rail service will still be available at Cary.

All other offices presently served by express between Greensboro and Goldsboro are on this schedule.

Q. Is Cary on the main line of the Seaboard?

[fol. 348] A. Yes.

Q. You propose to handle your express business at Cary by the Seaboard?

A. That is right.

Q. And all other stations by truck?

A. That is right.

Q. I get back now to the question I asked you before; as an expert in express, do you say that the proposed service will be better or worse than the present?

Mr. Burns: Objection on the grounds that the Railway Express Company does not have authority at the present time to serve any other towns except the four mentioned previously by the witness, to wit, Burlington, Durham, Raleigh and Goldsboro. And that any other service would require application to an approval by the North Carolina Utilities Commission, and this witness well knows that those things are fought out, and that the company does not always get what it asks for; and it's an assumption to as-

sume that just because this company wants service, it's going to get it.

Mr. Dixon: Sir, I think my friend, Kent Burns, is pushing this a little far; my question is based on the assumption; and in the absence of train service, the North Carolina Utilities Commission would meet the public need by authorizing truck service in this area. Now, to me, you know, anything else just doesn't make sense. We have had these [fol. 349] train cases all over the south; on 80 thousand miles of railroad, and that's how it has always worked out, and it's just bound to work out that way; you can't tell these people they can't have express service in the absence of train service. So, getting back to what I said in the beginning; my question as to whether, the question as to whether it is better or worse is premised on the proposition that the North Carolina Utilities Commission would authorize such truck service for the handling of express; and I can't imagine anybody objecting to it; the common carriers ordinarily don't object to truck applications for handling express; they are not in the express business.

Mr. Burns: Ask this witness what happened between Greensboro and Winston-Salem.— And based on that statement, if your Honor please, I would like to raise additional objection on the grounds that it calls for an opinion, a hypothetical question not based upon the existing facts.

Exam. Gibbons: Has the Railway Express applied for any additional authority to serve these additional towns?

The Witness: No, sir.

Exam. Gibbons: It proposes to apply to the State Regulatory Commission for additional authority in the trains are discontinued?

The Witness: Yes, sir.

By Mr. Dixon:

Q. As well as the Interstate Commerce Commission; because you handle interstate shipments as well as intrastate [fol. 350] shipments. This is not merely a matter for the North Carolina Utilities Commission, is it?

A. No, sir, it is not.

Exam. Gibbons: I'm going to permit the witness to express an opinion. Objection overruled.

The Witness: It is my—

Mr. Burns: May I ask a question; I'm not sure what rules cover this, but are we required to make an exception on each ruling?

Exam. Gibbons: No, sir.

Mr. Burns: I didn't think we were; I wasn't quite sure; thank you.

The Witness: It is my opinion that we would be in a position to give an improved service to the public through the use of our own trucking facilities.

By Mr. Dixon:

Q. I think that you said, in your judgment, REA would be in a position to give an improved service to the public through the use of your own trucking facility; did I hear you correctly?

A. Yes.

Exam. Gibbons: Do you know if that would require a purchase of additional equipment?

The Witness: In this case, no. It would not.

Exam. Gibbons: Proceed.

By Mr. Dixon:

Q. I had proposed to get around to that, Mr. Examiner; now, I don't think it is necessary. I was going to ask the [fol. 351] witness whether his available trucking facilities were adequate to take on this 4% of the total traffic that now moves by rail.

A. We could take on four times that much traffic.

Q. Yes, sir, thank you. Now, Mr. McVay, do you have any labor problem, if the trains are discontinued?

A. I cannot foresee any labor problem.

Q. Well, will any of your employees be released from service or down-graded?

A. We operate on 13 and 16 with one employee, and he is classified as an express messenger. The need for that man is that he can protect values, and assist in the loading

or unloading of trains at these offices. We operate on a seniority basis, the same as practically all of the railroad industry. That man who is governing the particular assignment in Greensboro and Goldsboro would not be affected other than his employment would be—he would still do the same type of work at the same salary—but, of course, there would be no work for him to do on the particular line in question.

Mr. Dixon: That's all I have, Mr. Examiner.

Exam. Gibbons: Cross examination, anyone?

Cross examination.

By Mr. Burns:

Q. Mr. McVay, as Division Superintendent of the REA in Greensboro, I take it you are familiar with the application of your company for authority to the North Carolina [fol. 352] Utilities Commission for authority to serve Burlington as an off-route point, which was made recently; are you not?

A. I am, yes.

Q. Now, that authority was granted to your company, was it not?

A. It was.

Q. And that authority was granted on February 24, 1961? Wasn't it?

A. I can't say it was, because I don't remember the date; but I do know it was granted; I don't recall the date.

Q. Do you know if it was this year?

A. Yes, this year.

Q. Do you know whether it was in February?

A. I believe it was, but I am not positive as to the date.

Q. Will you, subject to check, accept that it was February 24th?

A. I certainly would.

Q. Your Exhibit H 3 purports to show shipments for the year, March, 1960 to February, 1961, is that right?

A. Yes.

Q. Now, until the last four days of that one year period,

your company did not have authority to serve Burlington as an off-route point?

A. That would be right.

Q. Is the purport of this exhibit that you handle 8,552 shipments during that four day period?

[fol. 353] A. I don't quite follow you there; I don't handle 8,000 shipments in Burlington, I can answer it that way.

Q. In other words, this exhibit shows some shipments that were actually made over the train, which you have assigned to the trucks, is that right?

A. This exhibit, Mr. Burns, was prepared to show what we presently are doing; all of Burlington, and in recent months, Elon College has become part of Burlington; the Elon College shipments are also in this number of shipments. In other words, under our present operating procedure, these shipments move by truck, even though the trains are still operating through Burlington and Elon College.

Q. Well, virtually all of the 8,552 shipments you show for Elon College and Burlington were actually handled on trains 13 and 16, were they not?

A. A great portion of them were handled on 13 and 16 prior to the time that Burlington was taken into our trucking operation.

Q. That would be the last four days of this year that you are talking about?

A. Yes.

Q. Do you know that you have shippers that prefer the use of train to the use of truck?

A. No, I can't say that I know; I would suppose that there were people that would, of or for their own reasons. I have not been told by anyone that they preferred train to truck service.

[fol. 354] Q. Now, would you; one of your best shippers on this entire route testified that he prefers train to truck. Would that affect your conclusion as to future use of your truck service; should it be granted?

A. No, I don't think if one did, I don't think it would affect the final conclusion, no.

Q. What if it happened to be one of your biggest shippers?

A. I still would answer the same way.

Q. In other words, you don't care about it?

A. Yes, I most certainly do. Mr. Burns, I would like to take into consideration all of the factors that are involved, rather than just this preference, if I have to serve them.

Q. The fact is that you did not ship any express over trains 13 or 16 either to Durham or Raleigh during the one-year period shown on your Exhibit H3, is that correct?

A. No, sir; I wouldn't say that is absolutely correct.

Q. What is absolutely correct?

A. As stated previously, Mr. Burns, it would not be possible for us to ship our truck as you quite well know, from Haw River, Mebane, Hillsboro, Garner, Clayton, Pine Level or Princeton, because we have no authority to operate a truck in or out and serve those particular points; so if a shipment were moving from Princeton to Durham, we will say, and then, now that we only have train service, it would have to move by train.

[fol. 355] Q. In other words, the purpose of your Exhibit H 3 is not to show the actual situation as it existed during the year, for which you have chosen some figures; but to show what the situation would have been had you had used your truck service to the fullest extent possible?

A. Well, let us answer it this way, Mr. Burns; it reflects what we are doing now and we feel that we are utilizing the truck situation about as full as can be done at the present time.

Q. I take it that you don't like trains express service?

A. I wouldn't say that, no, sir.

Q. Well, why don't you use it?

A. We do.

Q. Well, your exhibit doesn't show any such use, does it?

A. We use train service extensively as you quite well know, we use a lot of what we call feeder service, Mr. Burns; when it is feasible or more economical to do so, trains; truck service, when it is possible to handle the business that way; but, by and large, when we hit the main lines of the railroad, it is more or less exclusively train service.

Q. In other words, the fact that this is a branch line would induce you to use truck—

A. To some extent it would, if that; to some extent it would affect my conclusion, you are correct.

Q. Now, the 4 per cent that you show being a proportion of the total, is not the actual experience of your company [fol. 356] during any given year, is it?

A. The four per cent, Mr. Burns, is that traffic which presently moves in 13 and 16.

Q. Which could not be moved under your present truck authority?

A. That's right. And, as stated, I'm moving every pound that I possibly can on the trucks.

Q. Have you made any effort not to use the train during that year?

A. No.

Q. Do you have the actual figures for your company, showing average shipments, or actual shipments, for the period March 1960 to February, 1961, showing the exact means of transportation actually used?

A. Those records would be available in our accounting department in New York; they were sent there; I would say they are available, individual records, one for each shipment, Mr. Burns.

Q. Where did you get the information here?

A. From our statistical reports, from our offices along these lines.

Q. They don't have the same type of information?

A. They have an account of the shipments, Mr. Burns.

Q. Is that all?

A. Yes.

Q. So you really don't know how they moved, except— [fol. 357] A. Yes; I think that the exhibit is accurate; I think it is an accurate reflection of just what I stated.

Q. Now, you know that you didn't move some shipments by rail into Burlington and Elon College between March 1960 and February 1961, don't you?

A. Yes, sir, we certainly did.

Q. You moved a lot of it?

A. That is exactly right.

Q. Is there any way to find out just what you did do?

A. Yes, there is, I would say, there is a very definite way to find out. Just about what we would do.

Q. I didn't ask you what you would do; I said what you did do?

A. All right, let's turn around and see what we did do.

Q. Can you find that out?

A. I can give you an estimate. I can't find it out without some weeks of research possibly; but I would say this, Mr. Burns; prior to the time that the Commissions, the ICC, and the Utilities Commission gave us our authority based on our application to serve Burlington and Elon College, which is now a part of Burlington, gave us authority to use our trucks instead of using train service; the 8,552 shipments most certainly would have been moving by rail because we had no operating authority by truck into Burlington.

Q. What do you mean by average monthly shipments as shown on your Exhibit H 3?

[fol. 358] A. That's the total divided by 12. The average number of shipments that moved per month, if you want to state it like that.

Q. In other words, to find out how many shipments you handled for the year, we could pretty well take the total at the bottom and multiply by 12?

A. I don't quite follow you, Mr. Burns.

Q. These are monthly shipments; now what we want to know is yearly shipments?

A. I would say you would be reasonably accurate to do that, yes.

Q. So there would be approximately 12,000 shipments, 12 to 13 thousand shipments that you could not handle even, strike out even, that you could not handle if Trains 13 and 16 were removed?

A. Unless we were given authority to expand our truck operations.

Q. What's the minimum charge on your shipments?

A. It varies some, Mr. Burns; depending on the commodities, but generally speaking, I would give you a figure of about \$2.84.

Q. And so your revenue; two dollars and what?

A. \$2.84.

Q. And so your revenue would be a minimum of about

\$2.84 for about 276,000 shipments a year over this line, is that right?

A. Well, it would be a minimum of \$2.84 for approxi- [fol. 359] mately 12 times 23,000, I will say that.

Q. Better than three-quarters of a million dollars a year, is that right?

A. I wouldn't say so, Mr. Burns, without calculating it. If you have calculated it—

Q. If you take 275; well, take 12 and multiply it by 23, which is considerably short of what you actually did; it would be nearer 24, wouldn't it; 24,000 shipments a month?

A. Yes.

Q. If you multiply 12 times the 23, rounding out to the lowest number, you would have about 276,000 shipments a year; a minimum revenue, according to your own estimate, of \$2.84, is that correct?

A. That is about the average, yes, sir.

Q. If you round that down to be on the safe side again, \$2.75, per shipment, and then it would be approximately \$800,000 a year, would it not?

A. I haven't calculated it, Mr. Burns, I really couldn't say.

Q. That's a pretty good estimate, isn't it?

A. It might be at those figures.

Q. It certainly couldn't be any less than that, could it?

A. I wouldn't say; now, if you want me to, Mr. Burns, I will undertake to calculate it for you and give you something; but right off hand, I couldn't give you a yes or no answer whether it is or not.

[fol. 360] Q. Well, we can have the figures in the record, and I suppose anybody that has a pencil can make the computations.

You will accept, subject to check, that you do handle approximately 12 times 23,983?

A. That is at approximately \$2.84 per shipment, yes, sir. That is about as near as I can get to being accurate.

Mr. Dixon: I don't like to interrupt, but I think the record ought to be clear that those are not rail shipments that are being discussed.

Mr. Burns: We are going to come down to the rail shipments now.

Mr. Dixon: You will get a lot smaller numbers.

Mr. Burns: Even if the figures on your H 3 were correct, and that you actually did not handle any shipments at all during the 12 months period to Elon College and Burlington, you would still have about 12,000 shipments, by Trains 13 and 16, is that not correct? During that year period?

The Witness: If we did not handle anything for Elon and Burlington, did you say?

By Mr. Burns:

Q. By rail?

A. In a year?

Q. In a year.

A. On an annual basis, we would handle about roughly 12,000 shipments by 13 and 16, that is right.

Q. Now, that would be express revenue for the railroad, express business handled by the railroad, somewhere in the [fol. 361] nature of \$34,000 a year, on that basis.

A. Close to that, yes, sir.

Q. And that is assuming that the 9,000, or nearly 50 per cent of the total that was actually handled by Trains 13 and 16, went by truck—

A. I don't quite follow you.

Q. You said a minute ago, that practically all of the 8,552 shipments that you shewed, Burlington and Elon College, actually went by train.

A. Prior to the time that we got authority to move by truck, you are right.

Q. Prior to the last four days of the year?

A. Yes.

Q. Now, the figure 34,000, assume that; or that 8,552, which actually moved on train, you would assume that those shipments were moved by truck, is that right?

A. I still don't quite follow you, Mr. Burns. If you don't mind repeating it.

Q. Let me repeat it. If we get, we figure out, take the 1,049 and multiplying it by 12 to get an annual figure, then multiply that by 2.84, we come up with approximately \$34,000; is that right?

A. Yes.

Q. Now, the \$34,000 figure that we come up with here, does not include any of the 8,552 shipments that Burlington or Elon College had?

[fol. 362] A. That's right.

Q. Which actually moved on the train, which under your exhibit, moved by truck, is that right?

A. It formerly moved by train; it will not move by train hereafter; it has been changed to truck service.

Q. You still can use the train as long as the train is there; there is no law prohibiting you from using the railroad?

A. You are right about that.

Mr. Burns: I believe that's all the questions I have.

Exam. Gibbons: You mentioned an express messenger on Trains 13 and 16, is there one in each direction?

The Witness: No, sir, only one.

Exam. Gibbons: That express messenger was not included in Mr. Waters' figures of yesterday?

The Witness: No, Mr. Waters doesn't include ours.

By Mr. Bryant:

Q. Mr. McVay, I show you what purports to be Docket R 5, Sub 172 of the State Utilities Commission, in the matter of the application of the Railway Express Agency for authority to transport express shipments over highways between Greensboro and Burlington, Greensboro and Asheboro, High Point, and other terminals, and ask you if that order of the Utilities Commission is not dated the 24th day of February, 1961?

A. Yes, sir, it certainly is.

Q. And that shows that there were no protestants for the application of the Railway Express Agency, does it not? [fol. 363] A. Yes, sir, that's what it says.

Q. If February 24, 1961 is the correct date on which the order was made, would you say that your Railway Express Agency did not start shipping by truck to these points until after this order was signed?

A. That order, if I viewed it right, is an order from the North Carolina Utilities Commission; is that right?

Q. Yes.

A. Intrastate traffic?

Q. Yes.

A. It would not have moved to Burlington by any means other than by rail, until the effective date of that order.

Q. So that you did not start shipping by Railway Express trucks until this order was signed?

A. Yes, sir.

Q. To these points here?

A. Yes, sir.

Q. And you, I mean you were not operating; I'm not sure I understand you; you were not operating in defiance of the order, but you waited until the order was signed in order to operate in compliance with it, is that correct?

A. You are correct in your assumption; we do not operate unless we have an order; but I might say this to you, we have to file applications with the Interstate Commerce Commission and with the NCUC, and on some occasions one or the other, but in most instances, it is the ICC that [fol. 364] will grant the authority for handling interstate shipments. Before we have authority to handle intrastate shipments. In such cases where we have duplicate services, we sometimes start our interstate movement in advance of starting the intrastate movement; or in other words, we might begin the truck service on shipments moving from one state to another, and confine it to that; and when the order comes through from the NCUC, we would start the intrastate business.

Mr. Bryant: I would say, your Exhibit H 3, I believe, shows the volume of shipments from March 1960 through February 1961, is that correct?

The Witness: Yes, sir.

By Mr. Bryant:

Q. I assume that from the first day of March, 1960, through the last day of February, the 28th of February, 1960, 1961; is that correct?

A. Yes, sir.

Q. And you show average monthly shipments during that period, from Elon College and Burlington with 8,552 by truck, and none by train, is that correct?

A. That is the average number of shipments that was handled at the Burlington office.

Q. Is that what your exhibit shows here?

A. My exhibit reflects what we have, what we are presently doing and what we will do hereafter, as far as Elon [fol. 365] College and Burlington traffic is concerned.

Q. Why do you label it then Volume—Shipments, from the 1st of March, 1960 through February, 1961? And show no shipments by train during that period?

A. As I previously stated in my testimony, prior to the Commission's giving the authority to use truck service on the Burlington and Elon College, that entire volume moved by train.

Q. You show on this same exhibit No. 3, that there was average monthly shipments from March 1960 to February 1961, from Durham of 9,289, and you show that none of those were by train on your exhibit, do you not?

A. That's right.

Q. Now, if during that period, from March 1, 1960, to 24 February, 1961, you did ship by train because you had no authority to ship by truck, then this exhibit does not reflect the true facts, does it?

A. If what you have just stated was the facts, then your assumption would be right. But, I would like to call your attention to the fact that for a number of years, we have had truck authority to serve Durham between Greensboro and Goldsboro; that dates back some several years, and possibly coincides with the removal of some other trains. And I believe it was based on that, between Greensboro and Goldsboro. We have been serving for a number of years Durham, Raleigh, and at one time, extensively at Selma, [fol. 366] but now almost none at Selma, and Goldsboro.

Q. Are you telling me that prior to 24th of February 1961, that you did all of your express shipping to and from Durham by truck?

A. Virtually all of it, I would say, yes.

Q. How about Burlington and Elon College?

A. No, sir, I wouldn't say that because we didn't have the authority up until you have just shown me.

Q. If you got the authority for Burlington-Elon College on 24th February, 1961, and—

A. Yes.

Q. And for four days, out of that month there, 30 days from March; I mean, four days out of the month of February, that means that approximately, one-seventh of your shipments for that period were carried by train, does it not, for the month of February, 1961, from Burlington?

A. Now, I wouldn't say that that would be right.

Q. Six-sevenths by train and one-seventh by truck, is that right?

A. I think that is getting close to right, yes.

Q. You show that during that period, to the end of February, 1961, there were no train shipments of express, did you not?

A. As you are looking at the exhibit, yes, sir.

Q. Then, your exhibit, in that respect, is just about six-[fol. 367] sevenths incorrect, isn't it?

A. If you want to view it from that standpoint, yes, sir.

Q. I'm viewing it from what you said; you gave the volume.

A. I have already explained, if you please—that's historical data.

Q. Who prepared this exhibit?

A. I did.

Q. Who, under whose direction?

A. Under my own.

Q. You mean no one asked you to get this exhibit up?

A. Certainly did not.

Q. You weren't requested by anybody at all?

A. No, sir.

Q. To prepare this exhibit?

A. I was not.

Q. You just, on your own motion, you prepared and brought it here this morning?

A. I prepared it and I have it here with me this morning, yes, sir.

Q. And nobody asked you to prepare it and nobody asked you to bring it here this morning?

A. They absolutely did not.

Q. And now you have duplicating service, or duplicating service between Greensboro and these points here—Burling-

ton, Durham, Raleigh, Selma, and Goldsboro; available by train, is it not, the express shipments?

[fol. 368] A. Yes, sir.

Q. And it is just a question of which alternatives you decide to use, whether you ship it by truck or by train, is that right? You have your choice to ship either way, do you not?

A. It could be shipped either way; let's put it like that.

Q. It could be shipped either way?

A. It could be.

Q. Who determines which way you want to ship it?

A. We do.

Q. That's the Railway Express Agency?

A. Yes, sir.

Q. And Southern Railway Company never protested when you asked permission to take all of this freight business away from them, or give the right to ship by truck, did they?

A. To my knowledge, they did not protest.

Q. You would have known it, wouldn't you?

A. I certainly think I would have.

Q. Is it correct to say that Southern Railway Company did not protest the loss of this freight business?

A. Yes, sir, I think you are absolutely correct.

Exam. Gibbons: You are referring to express, aren't you?

Mr. Bryant: I use the term "freight"; I was in error; I had reference to express; thank you for the correction.

By Mr. Bryant:

Q. Now, Mr. McVay, if train No. 16, as it left the Durham [fol. 369] station this morning, had on the back of the train a refrigerator car, would you know what type of freight was being shipped; I beg your pardon; express being shipped in that refrigerated car?

A. Yes, sir, I think I would.

Q. What would you say?

A. That is a perishable commodity moving to Raleigh.

Q. Would it be milk?

A. No, it's not milk, it's fruit.

Q. Fruit?

A. Yes.

Q. That would have to be shipped, that commodity would have to be shipped in a special type of truck, would it not?

A. That commodity, if it were shipped the distance that this particular one moved; I believe it was coming from out in the western, from the west coast, would have to be in a refrigerated truck, yes, sir.

Q. Well, does the Railway Express have refrigerated trucks in Greensboro?

A. In Greensboro we do not have refrigerated trucks.

Q. So you are not now equipped to perform that type of transportation, delivery of fruits and commodities of that nature?

A. I might say this, about the car that you referred to, it did not move from Greensboro.

Q. Didn't what?

[fol. 370] A. Did not originate in Greensboro. We do not presently handle refrigerated trucks or refrigerated trailers.

Q. So that if these trains were discontinued, that's going to, that means that the Railway Express would have to obtain additional equipment in order to be able to handle that type of merchandise?

A. If that particular car that you speak of, which did arrive this morning, if it, if the Railway Express continued to handle that particular traffic, they would have to make some special arrangements to get it to Raleigh, that's right.

Q. Does the Railway Express have a milk truck in Greensboro?

A. I don't know what you are referring to.

Q. A truck designed to transport milk.

A. I would say no; we handle no milk, so I know of no reason to have a truck.

Mr. Bryant: I believe that is all I want to ask the witness.

Exam. Gibbons: Further cross examination?

By Mr. Graham:

Q. Mr. McVay, not to belabor the point that Mr. Bryant made in his cross examination with respect to your Exhibit H3; am I correct in assuming that there were no shipments of express by your agency, which originated in Durham during and entire year period, and went to any of the other points which are indicated on your exhibits, which are served only by the railroad.

A. No, you would not be correct; and if you don't mind, [fok 371] I will explain.

Q. I will be happy for you to.

A. Some of our statistical figures might shed some light on this.

Let's take the shipment volume at Mebane, North Carolina, of 440 shipments for a month. That includes all shipments coming into the town, and all shipments going out of the town; they may or may not, I wouldn't know the details, whether or not any of those shipments move from Durham to Mebane; I wouldn't know about that.

Q. In other words, your exhibit as indicates on its face, that no shipments of express originated or terminated by rail in Durham, and it may very well be misleading and incorrect?

A. It could be very well misleading, yes, sir.

Mr. Graham: That's all.

Mr. Jones: May I ask one question?

By Mr. Jones:

Q. You said that nobody asked you to prepare Exhibit H 3; in fact, you prepared it yourself and brought it here. How did you find out what to put on it, as to the ICC Finance Docket 21563?

A. I did not put that on there.

Q. You did not put that on there?

A. No.

Q. Didn't you state to Mr. Bryant that you prepared this exhibit and brought it down here?

[fol. 372] A. Yes, sir, I prepared the exhibit from the statistical reports in my office. Nobody asked me to prepare it, that exhibit.

Q. But you did prepare it yourself?

A. I did.

Q. You brought it down here?

A. Yes, sir.

Q. Were you subpoenaed to be at this meeting, this hearing?

A. Subpoenaed?

Q. Yes.

A. No, I wasn't; I was requested to be here, but I wasn't subpoenaed.

Q. You say you were asked to be here?

A. Yes.

Q. By whom?

A. My Vice-President wrote me and told me to attend this hearing.

Q. So you weren't asked, you were told?

A. You might put it like that, yes, sir.

Q. When you were told that, you thought you had better get up a little something or another to bring down here, is that right?

A. Yes.

Q. He didn't tell you to get anything?

A. No, sir, he didn't tell me to do anything.

Q. He didn't ask you to bring anything, you just did [fol. 373] that on your own hook, right?

A. No one asked me to bring the exhibit that you refer to. Someone did ask me to bring exhibits as to present and proposed schedules.

Q. Is that your boss?

A. No, sir.

Mr. Dixon: Mr. Examiner, I don't like to interrupt; but it seems to me that all of this is irrelevant, and it has nothing whatever to do with the merits of this controversy. Mr. McVay is here, he has given the facts and of course, he is subject to cross examination on the facts, but how he got here, or who prepared the exhibits, that's all irrelevant so long as the exhibit is correct; and I think, in the interest

of time, we ought to cut down on this, otherwise, we will be here a long time.

Mr. Jones: Well, of course, I don't agree with Brother Dixon; he has given the facts, he has given some testimony here, but anyway that's a matter of argument; let me ask you this; are you in favor of taking off these trains?

The Witness: From an operational standpoint of the Railway Express Agency, I would be in favor of it, yes, I think so.

By Mr. Jones:

Q. What other kind of a standpoint?

A. That's the only standpoint that I would consider.

Q. So, from your standpoint, it would be better for you to reduce your method of transporting of express from [fol. 374] two methods to one method, is that what you tell us?

A. I would prefer to do that, yes, sir.

Q. In other words, you would be better off, you think, to eliminate one of the methods which is available to you, to your company, to transport the express?

A. On this particular line, yes, sir.

Q. Did your boss tell you testify to that down here?

A. No, sir.

Mr. Jones: That's all.

By Mr. Burns:

Q. You mean to sit there and tell us that you think that you would be better off without any rail service available to carry your railway express shipments to these points, when you wanted to take them by rail?

Mr. Dixon: Sir, is this a recross; are we going through the line again; are we going to do this with every witness?

Mr. Burns: I withdraw it.

Mr. Dixon: Let's agree on some procedure and try to get this thing behind us.

Mr. Burns: I withdraw it.

Exam. Gibbons: All right, is there anyone who hasn't had the opportunity of cross examining?

(No response.)

Exam. Gibbons: The witness may be excused.

Mr. Dixon: I just have one or two questions on redirect; I want to be certain, Mr. McVay, that I understand correctly [fol. 375] rectly your Exhibit H3.

Redirect examination.

By Mr. Dixon:

Q. As I understand it, during the period March, 1960 through February, 1961, the average monthly shipments of express to and from the stations indicated on that exhibit, are those shown in the first column, and they total 23,983, and that represents the shipments irrespective of the method of transportation?

A. That is right.

Q. Under the new plan, which apparently became effective in February, 1960, or 1961, on the same volume of traffic, Trains 13 and 16 would have received only the shipments listed in the second column, which total 1,049, and represent 4% of the total shown in column one?

A. That is right.

Mr. Dixon: That's all I have.

Mr. Burns: I have a question of the witness in reference to that.

Recross examination.

By Mr. Burns:

Q. Everyone of those 23,983 average shipments that you show on your Exhibit 3 can be shipped by Trains 13 and 16, can they not?

A. Yes, they could all be moved on Trains 13 and 16.

Mr. Burns: No further questions.

Mr. Dixon: No further questions.

[fol. 376] Exam. Gibbons: The witness is excused.

(Witness excused.)

Mr. Dixon: Sir, may the witness be excused from the hearing; as testimony shows, he is stationed in Greensboro, and I'm sure he wants to get back to his job?

Mr. Burns: We have no objections, sir.

Exam. Gibbons: The witness may be excused.

At this point, we will take a brief recess. We will recess until 25 until 11:00.

(Short recess taken.)

Exam. Gibbons: On the record.

Mr. Dixon: Mr. Examiner, before we call the next witness, I would like to say for the benefit of the Examiner and the parties that the relations between the Express Company and the Southern Railway, and other railroads throughout the country have been approved by the ICC in Docket No. 33140, which constitutes an approval of the operating agreement between the railroads and the Express Company, effective October 1, 1959. I think that we have called Mr. Gleason.

A. B. GLEASON, was duly sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. I ask you your name, address, and occupation. I take it you were sworn.

A. Yes, sir. A. B. Gleason, I reside in Washington, [fol. 377] D. C. I'm a Supervisor Statistician for Southern Railway System.

Q. What is your railway experience?

A. I have been with the Southern Railway for a period of more than 30 years; all of this service has been in the Accounting Department; the last nine years, I have been in the Statistical Section.

Q. Have you or have you not testified in train discontinuance cases?

A. I have, sir.

Q. I think this is the first one we have had before the ICC.

A. That is correct.

Q. There have been numerous cases before the various State Commissions?

A. Yes, sir.

Q. I think you have testified in this case when it was before the North Carolina Utilities Commission; you testified in this case?

A. Yes, sir.

Q. Mr. Gleason, will you turn to our application, to the ICC, and state the pages and exhibits for which you are responsible, and which you support at this hearing?

A. Starting at the bottom of page four, and going on to the top—

Q. Wait a minute; at the bottom of page four, is that the last sentence on the page?

[fol. 378] A. Yes, beginning "Southern Railway has sustained a wholly distributed—"

Q. That's where you start?

A. Yes, sir.

Q. All right, sir, that's page four. Now you go over to page five, and how much on page five are you responsible for?

A. The first paragraph ending with the words "progressively declined."

Q. That ends with "patronage of the trains has progressively declined."?

A. That is correct.

Q. Now, where do you start up again?

A. On page 25, under Item 7, "The traffic transported—"

Q. How far do you go, Mr. Gleason?

A. Through the top of Page 31, the first two lines.

Q. The first two lines, top of page 31?

A. Yes, sir.

Q. That takes care of the text of the application; how about the exhibits?

A. My exhibits are No. 3, 24, 25, 26, 27, 28, 29, 30, and 31.

Q. Do you have any corrections to make in the text of the application from which, for which you are responsible or in the exhibits to which you have referred?

A. No, sir.

Q. Are all the statements and figures true and correct to the best of your knowledge and belief?

[fol. 379] A. They are, sir.

Q. Now, Mr. Gleason, I understand that you want to bring some of these matters up today?

A. Yes, sir, my exhibits in the Petition cover the two calendar years, 1959 and 1960, as required by the Interstate Commerce Commission, and I want to bring these exhibits up through May, 1961, with the exception of Exhibits 30, which is the Balance Sheet, and 31, the Income Statement. Then up through April, 1961, the last, the latest month available.

Q. Do you have a supplemental exhibit, that you want to introduce and bring these figures up to date; has it been distributed?

A. No, sir.

Mr. Dixon: Mr. Examiner, we weren't just sure how you wanted these new exhibits to be numbered, so we just left the Exhibit Number blank; should we just start in with H 4, and go right on through?

Exam. Gibbons: And then consecutively thereafter, begin with H4.

The Witness: Mr. Dixon, some of these, say H 4, in the original ones, that's one exhibit consisting of two sheets, do you want the H 4 sheet one, and sheet two?

Mr. Dixon: Well H4 seems to be an exhibit of two pages?

The Witness: Yes, sir. It is Passengers Handled on Train 13 (Operating Daily Goldsboro, N. C. to Greensboro, [fol. 380] N. C.) January Through May 1961—151 Trips. And then on the second page, it says the same thing, except as relates to Train 16.

The Witness: Yes, sir.

Mr. Dixon: Mr. Examiner, could we number that Exhibit H4, page 1 and page 2?

Exam. Gibbons: It may be so marked for identification; and let's mark all the rest of them that he's got, testified to, at this time. Let's mark them all at this time.

Mr. Dixon: Exhibit identified H4, pages 1 and 2, bring up to date, your Exhibit No. 24 attached to the application; is that true?

The Witness: Yes, sir.

Mr. Bryant: Mr. Dixon, you say up to date, do you mean through what?

Mr. Dixon: Through May, as indicated on H4, Mr. Bryant.

Mr. Bryant: Thank you.

Mr. Dixon: Now, the next exhibit would be H5, consisting of one sheet entitled Passenger Traffic Statistics, and I believe that brings up to date your Exhibit No. 25?

The Witness: Yes, sir.

By Mr. Dixon:

Q. Up to date of May 1961.

Now, the next one is H 6, entitled Trains 13 and 16 operating between Greensboro, N. C. and Goldsboro, N. C., Passenger Traffic Statistics, and that brings up to date; but I don't know what day; Exhibit No. 26.

A. Yes, sir, same as the others, five months of 1961.

[fol. 381] Q. Oh, yes, it's shown on the bottom on the left, five months; that's the addition, that last line?

A. Just one additional line has—

Mr. Eisenhart: In other words, you have copied 26 and added the line?

The Witness: That is correct.

By Mr. Dixon:

Q. And an exhibit identified as H 7 is entitled Operating Results of Passenger Trains Nos. 13 and 16, Greensboro, N. C. to Goldsboro, N. C., January through May 1961; and that brings up through May 1961, the showing made on Exhibit 27 attached to the application?

A. Yes, sir.

Q. Does 28 have anything to do with it?

A. No, sir.

Q. Exhibit H 8, entitled Feeder Value of Trains 13 and 16, Operating Between Greensboro, N. C. and Goldsboro, N. C. accruing to the Southern Railway System; January through May, 1961, supplement Exhibit 29, attached to the Application?

A. Yes, sir.

Q. Exhibit identified as H 9 is your Balance Sheet as of April 30, 1961, and it supplements Exhibit 30 attached to the application?

A. Yes, sir.

Q. Exhibit H 10 is your Income Account ending April 30, 1961, and that supplements the Income Account shown on Exhibit 31, attached to the application?

[fol. 382] A. Yes, sir.

Q. Mr. Eisenhart called attention to the fact that one of the supplemental exhibits adds to both Exhibits 27 and 28, and that—

A. Yes, sir, if I may explain. Exhibit 27 is a one sheet exhibit showing the Operating Result of these two trains for the year 1959. Exhibit 28 shows the Operating Results for the year 1960; that consists of ten schedules that is prepared in the so-called NAEUC Formula. We didn't think it necessary to prepare both years in this formula; it is quite a voluminous task.

Mr. Dixon: Mr. Examiner, these exhibits are described, we think, in our Petition, but Mr. Eisenhart and I feel that it might be well for the witness to briefly describe these exhibits as a matter of clarification and to provide a ready basis for cross examination, without these gentlemen having to wade through all of these papers.

So, Mr. Gleason, will you take up your exhibits 3, and then 24 through 31, and explain briefly what they show?

The Witness: Exhibit No. 3 is a Passenger Service Operations of the Southern Railway Company for the years 1948 through 1960. This information is taken right from Table 300 Income Table, in a formal report to the Interstate Commerce Commission. Column (2) is the Passenger Service Operating Revenues; (3), Expenses; (4) Taxes; (5) Equipment and Joint Facility Rents; (6) Total Operating Expenses, Taxes and Rents; Column (7)

is your Net Railway Operating Income, that is the figure on which your rate of return is predicated as to your gross investment and net investment. The next figure is column (8), Passenger Train Miles, passenger train miles for the Southern Railway Company during these years. I might say for the year 1960, the Net Railway Operating Income was a deficit, \$14,669,798. Column (9), the Average Revenue Per Train Mile, \$4.26, that's relating your column 2 and 8. Column (10) is the Average Cost Per Train Mile, \$6.63, relating columns 6 and column 8; Column (11) is the Average Cost Per \$1.00 of Revenue, \$1.56; it costs \$1.56 to earn a revenue passenger \$1.00; that is relating Column 6 to Column 2.

By Mr. Dixon:

Q. Mr. Gleason, now, Column (7), Railway Operating Income, as you pointed out, shows a passenger deficit of \$14,700,000 for 1960; what are those figures based on; is that the uniform system?

A. That's based on the uniform system of accounts. I might explain that all are expenses in the orders of the ICC; all freight expenses are charged direct when possible; all passenger expenses are charged direct when possible. There are a number of expenses, a great deal of expenses money-wise, that are coming to both services; and at the end of the year, on a formula prescribed by the Interstate Commerce Commission, these common expenses are pro-rated back to your freight and your passenger operations. [fol. 384] That is why I could not bring this particular exhibit No. 3 through any later date than the calendar year, because the common expenses are only broken down and pro-rated back to the two services on the ICC Formula at the end of the calendar year.

Q. The figures in Column (7) are usually described as fully distributed figures?

A. Yes, sir.

Q. Are there any other solely distributed cost figures in this Petition or in any of your exhibits?

A. No, sir, the exhibits that follow, I have used only direct passenger costs.

Q. So-called out of pocket?

A. So-called out of pocket.

Q. Are they based on any particular formula for so-called out of pocket?

A. The uniform system of accounts all are expenses charged to these accounts as prescribed by the Interstate Commerce Commission.

Q. By the Southeastern Association of Utilities; don't they have some formula?

A. Yes, sir, Exhibit No.—that's the NARUC, I'm told. That's Exhibit 28, it was prepared in the approved formula of the National Association of Railroad and Utilities Commission.

Q. All right, sir, would you take up, beginning with Exhibit 24.

[fol. 385] A. Exhibit 24 consists of four sheets. Sheet No. 1 shows Passengers Handled on Train 13 (Operating Daily Goldsboro, N. C. to Greensboro, N. C.) Year 1959. On the left hand side shows where the people got on the train, the daily average; got off, and the daily average; and across the top shows the various stations where they de-trained. This shows for the year 1959, for Train 13, there were 6,462 passengers for a daily average of 17.7. The next sheet, Sheet 2, is the same information for Train 16, for the same year.

Q. Mr. Gleason, just a second; getting back to Sheet 1 of Exhibit 24, you've got a total there of 6,462, during the year 1959, and the exhibit shows that one of those passengers went to Rose, North Carolina, which is the first station?

A. Yes, sir.

Q. Then jumping all the way over, 3,910 of them went to Greensboro, is that the way you read it; all the way over.

A. 456; oh, from all the stations; yes, sir. I was thinking of Goldsboro, on the first line; but for all of them, 3,910 to Greensboro, that is correct, sir.

Q. All right, now, take up the second sheet.

A. Sheet 2 shows the same information of Train 16 during the year 1959; it shows that there was a total of 7,789 passengers for a daily average of 21.3. This is pre-

pared in the same form; it shows where the in-trained on the left and across the top are the stations that, where they de-trained.

[fol. 386] - Q. That shows where one of those passengers went to McLeansville, North Carolina, and 1,534 went to Goldsboro?

A. Yes, sir.

Sheet 3 is the same information; Train 13 for the year 1960. That shows 7,076 passengers for a daily average of 19.3. It is prepared in the same form; shown on the left where they got on; across the top, where they got off.

Q. Of the 19.3, related to Train 13?

A. Yes, sir.

Q. And the next page shows—

A. Train 16; the same information, for the year 1960; 7,700 passengers for a daily average of 21. And this is prepared in the same way.

Q. Now, Mr. Gleason, wouldn't it be most convenient to turn to Exhibit H 4, which supplements No. 24, and bring it up to date?

A. Exhibit H 4, Sheet 1, shows the number of Passengers Handled on Train 13, from a period of January through May 1961. This period will show 4,384 passengers for an average of 29.0 that use this Train 13. Exhibit H 4, Sheet 2, shows similar information for Train 16 for the same period; 4,550 passengers for a daily average of 30.1; that's Train 16.

Exam. Gibbons: Are these figures based upon actual amounts, actual count, or estimates?

The Witness: Actual counts.

Exam. Gibbons: Who took the counts?

[fol. 387] The Witness: Our Auditor of Passenger Accounts made the compilation of these figures.

Exam. Gibbons: They weren't based on Conductor's—

The Witness: They were taken from the Conductor's lifts.

Exam. Gibbons: Proceed.

By Mr. Dixon:

Q. Now, Mr. Gleason, I guess the next one is 25.

A. Exhibit 25 consists of two sheets, Sheet 1 is Passenger Traffic Statistics for Trains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, North Carolina, for the Year 1959. It shows the number of trips operated, trip mileage, total train miles operated, total number of passengers carried, total passenger miles, total passenger revenue; and starting with the next line, it gives your average number of passengers per trip, 19.5 for both trains; that is your total number of passengers carried, divided by the number of trips operated. And that gives you a result of 19.5 people using the trains. The next one is average miles per passenger; that is taking your total passenger miles, 643,398, and dividing that by the total number of passengers carried of 14,251, and it gives you an average number of miles per passenger of 45.1; that is the average haul, as you might say. Next item is the average revenue per passenger, expressed in cents, 139.211; that's \$1.39; that is your total passenger revenue of \$19,839, divided by the total number of passengers carried, 14,251. [fol. 388] Next item, average passenger revenue per train mile, also expressed in cents, 21.067; that is 21 cents; that is your total passenger revenue of \$19,839 divided by the total train miles operated of 94,170; and gives you 21.067.

The last item, average passenger miles per train mile of 6.83; that is your total passenger miles of 643,398, divided by your total train miles operated, 94,170, to give you 6.83, or approximately seven passengers, making the entire trip.

Q. Now, Mr. Gleason, H 5, Exhibit H 5 brings the showing made in 25 up through May of 1961, and it is prepared in the very same way, isn't it?

A. So is the Sheet 2 of 2 of the Exhibit No. 25, showing the same information for the year 1960.

Q. Supposing we go to 26.

A. 26 is a historical record, so to speak, of the operations of Trains 13 and 16 between Greensboro and Goldsboro, North Carolina, for the year 1943 through 1960. It shows for Train 13, No. of Trips, No. of Passengers, Passenger

Revenue, Average No. of Passengers per trip; Average Passenger Revenue Per trip. Train No. 16, it shows the same information, and over on the far end, the totals; the same columns, the same headings, for the total of Trains 13 and 16. It shows—

Q. Let me ask you just a couple questions. And I think maybe we can save a little time. What does the exhibit show as to both trains in 1948, with respect to the average number [fol. 389] of passengers per trip, and the average passenger revenue per trip?

A. For the year 1948, both trains, the average number of passengers per trip was 77.51.

Q. What was that in 1960?

A. In 1960, the average number of passengers per trip is 20.19, or decrease of 74 per cent.

Q. Give us the comparable figures on the revenue.

A. The average passenger revenue per trip, 1948, \$82.70; and the year, 1960, \$28.87, for a decrease of 65 per cent.

Exam. Gibbons: The last figure, \$28.87, that's the average revenue per round trip, or one way?

The Witness: It's the average revenue per one way; we are using both trains here; if you look over on Train 13, the average revenue is \$28.40 and Train 16, is \$29.35.

Exam. Gibbons: Thank you.

By Mr. Dixon:

Q. Mr. Gleason, H 6 brings through May of 1961 the showing made on Exhibit 26, does it not?

A. That is correct.

Q. Prepared in the same manner?

A. Yes, sir.

Q. Now, would you go to 27 please.

A. Exhibit 27 shows the Operating Results of Passenger Trains Nos. 13 and 16, Greensboro, North Carolina to Goldsboro, North Carolina, for the year 1959. At the top [fol. 390] of the page, it shows Revenues: Passenger Revenue, \$19,839; Express, \$31,875; Miscellaneous, \$356, for a total revenue of \$52,070. Below that, the out of pocket costs, detail shows Wages, Train and Engine Crews, Payroll Tax, R.R. Retirement & Unemployment Insurance,

Train Fuel, Net Loss, Engine House Expenses, Passenger Locomotive Lubricants, Other Supplies, Repairs, Passenger Train Cars,—Cleaning, heating, lighting and water and Icing; Lubricants, Other Expenses, Repairs, Air Conditioning, Goldsboro Union Station, Rental of Equipment; giving a Total Direct Expenses of \$174,907. Direct Expenses in Excess of Revenues of \$122,937, for a ratio of 336, or \$3.36, was expended to earn a revenue dollar.

I call your attention to the bottom of the Exhibit; Items of Expense Not Included; no maintenance of Way-Tracks and Structures; the only maintenance of equipment we have is repairs; no Maintenance of Way-Supervision-Depreciation-Retirements; Maintenance of Equipment-Supervision-Depreciation-Retirements; No Traffic Expense; No transportation expenses for Supervision-Train Dispatching and numerous overhead Accounts; no General Expenses; No Taxes—except Payroll and no Fixed Charges, that is, Bond Interest, and payments on equipment.

Q. Now, these expenses are what we call the out of pocket expenses?

A. Yes, sir, related directly to the operation of the trains.

Q. Are these figures prepared in accordance with the [fol. 391] NARUC Formula?

A. Yes, sir.

Q. I think we explained in our Petition the basis for these figures, have we not?

A. Yes, sir. On page, starting with Page 28.

Q. Do you wish to elaborate? On what you have shown on pages 28 and 29 of—let's see, are there any more—and 30?

A. I think the explanation is required by the Interstate Commerce Commission. It is complete unless you want me to add to it.

Q. I do want to ask you one question. The figures shown for wages and payroll taxes are actual, are they not?

A. Yes, sir.

Q. Why do you not include depreciation on equipment?

A. Weil, the principal reason is that it would be very difficult to assign a proportion of the depreciation expenses to the operation of a particular segment of the line; that can be said of your other expenses like maintenance of

way; it is, there is a cost, but it's very difficult to say now just what part of that cost should be assigned to a particular segment of a line. Now, we all know that there is cost there, but of course, there is a difficulty in assigning it and we have never used it.

Q. Will you turn to Exhibit 28, and tell us briefly what 28 shows, and relate it to 27.

[fol. 392] A. Exhibit No. 28 consisting of Index of Schedules, shows the Operating Results of Passenger Trains 13 and 16 Between Goldsboro and Greensboro, North Carolina, in the year 1960; it shows by months, the calendar year, Passenger, Express, and Miscellaneous Revenues of \$53,101. The Direct Expenses of the items I have just enumerated, the same thing, for the year, also shown by months, \$170,742; Direct Expenses in Excess of Revenues of \$117,641, and the next line shows that the Car miles Operated on this line for the calendar year 1960, and Train Miles Operated, and then there are some computations below that, Revenue Per Train Mile in Cents; Direct Expenses Per Train Miles in Cents; and Direct Expenses in Excess of Revenue Per Train Miles in Cents. Now, the first Sheet, Sheet 1 of this Schedule, shows the Operations of both trains.

Q. Now, you are talking about Schedule 1 of Exhibit 28?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Go ahead.

A. Sheet 2 is the same information in the same form for Train 13. Sheet 3 is the same information in the same form for Train 16. Schedule 2 is Passenger Revenue I.C.C. Account 102, shows the miles operated, the Passenger Revenue for Train 13, and shows the revenue per train mile expressed in cents; and the Passenger Revenue for Train [fol. 393] 16 and the revenue per train mile expressed in cents. It shows Passenger Revenue for the year 1960 of \$10,394, and 22 cents train mile, for Train 13; and \$10,741 for Train 16, and 22.7 cents per train mile.

Q. Mr. Gleason, let me see if I can shorten it up a little. On Schedule 1, of Exhibit 28, where you show these various out of pocket expenses, you indicate to the right of the

described expenses a Schedule number in this exhibit. And as I understand it, that Schedule number provides the basis for your figures?

A. Yes, sir, starting with Schedule 2 of this exhibit 28, is the supporting information to the summary as shown on Schedule 1.

Q. For example, taking Schedule 1 of Exhibit 28, up at the top there you have got Account 102, Passenger (Schedule 2); and then you show the passenger revenues month by month for the year 1960.

A. That is correct, sir.

Q. And Schedule 2 provides the basis for the determination of those figures?

A. By months.

Q. So on down the exhibit?

A. Yes, sir.

Q. I don't believe it is necessary, Mr. Examiner, for the witness to take up each of these supporting schedules and testify about them.

Exam. Gibbons: I don't think so unless there are any [fol. 394] questions.

Mr. Dixon: Yes, sir.

Mr. Burns: We will take them up one by one on cross examination; we don't object to his not taking them up.

By Mr. Dixon:

Q. Mr. Gleason, supplemental Exhibit H 7 brings up through May, 1961, the showing on Exhibit 27, does it not?

A. Yes, sir.

Q. 27, 28, in fact?

A. Yes, because we have 28, that is just the same as 27, only in the detailed form, as required by the NARUC Formula. This Exhibit H 7 shows Total Revenues of \$15,490 for the period of January through May 1961. Direct Expenses of \$70,321; Direct Expenses in Excess of Revenues \$54,831, for a Ratio of 454; of course, \$4.54 to earn a revenue dollar in the operation of these Trains for the period January through May 1961.

Q. Now, Mr. Gleason, Exhibit No. 29 is supplemented by Exhibit No. H 8?

A. Exhibit No. 29 shows the Year of 1959 and 1960, the two calendar years; System OFF Line Revenue generated by the operation of these two trains; for the year 1959, \$73,960; for the year 1960, it was \$83,034. From that we have deducted 50% Operating Costs, in lieu of actual actual operating costs; 50% is a per cent agreed upon by the Interstate Commerce Commission in abandonment cases.

Mr. Burns: Mr. Examiner, I object to that; I don't think [fol. 395] the Commission has ever agreed on it. The Commission has simply let that in and held the Railroads accountable for that portion of it, as a minimum, while making very clear in its opinions that it expected the net revenue for these passengers to be in excess of 50%.

Mr. Dixon: Mr. Examiner, I think we can let the cases speak for themselves. I think Mr. Gleason was mistaken when he said "agreed"; he must have meant accepted, or something like that; but we all know what we are talking about, so what difference does it make.

Exam. Gibbons: The Commission has used the 50% formula in the abandonment cases, and also train discontinuance cases.

Mr. Burns: Yes, but that has been over a railroad objection, that they should not be charged with any part of it; the point I am making is that the 50% as recognized in the Commission's opinions, has been a minimum figure and not a maximum figure, as Mr. Gleason, I think, inferred.

Mr. Dixon: In connection with Exhibit 29, and supplemental Exhibit H 8, the Southern Railway System is composed of a number of separate corporate properties, railroad properties, is it not?

The Witness: Yes, sir.

By Mr. Dixon:

Q. And when you refer on these Exhibits to Southern Railway System, you are including the Feeder Value as to all of the separate railroads that are in our system?

[fol. 396] A. Every railroad involved in our system, that receives revenue from the operations of these trains is included in here.

Q. Now, if you will take out the balance sheet on Exhibit 30, as supplemented by Exhibit H 9.

A. The Balance Sheet is shown on Exhibit 30, for the year 1960; it is merely taken right from our annual reports of the Interstate Commerce Commission. Sheet 2 shows the same; I'm sorry, Exhibit 30 is just one sheet, the Balance Sheet.

Q. And that's supplemented by H 9, isn't it?

A. H 9; and that is the same Balance Sheet, taken through April 30, 1961.

Q. And now; why don't you bring that through May, Mr. Gleason?

A. That was the latest period available.

Q. I think the last of your Exhibits, the exhibits for which you are responsible, is Exhibit 31; that's the Income Account statement; that's supplemented by H 10. Were they just taken from Books of the company?

A. Exhibit No. 31, Sheet 1 of 2, was taken right from the Income Table in or Form A, Annual Report, to the Interstate Commerce Commission. That's for the year 1959. Sheet 2 is the same information for the year 1960. And that shows a break down of your expenses between Freight and Passengers, taken down to Net Income. Now on Exhibit H 10, across the top is shown that this is Income Account for Four Months ended April 30, 1961. Of course, the [fol. 397] common expenses are not broken down and prorated between the two services, Freight and Passenger; it is not possible to do that; so they are just shown in total. It's the Income table for the four months, April 30, 1961, but it does not make a separation between Freight and Passenger.

Mr. Dixon: That's all on direct, Mr. Examiner.

Exam. Gibbons: Cross examination?

Mr. Burns: If you will give me a moment to get organized.

Exam. Gibbons: Do you want a short recess?

Mr. Burns: I don't think it is necessary, sir.

Exam. Gibbons: Off the record. We will recess for five minutes.

(Short recess taken.)

Exam. Gibbons: Back on the record.

Cross examination.

By Mr. Burns:

Q. Mr. Gleason, I believe the first exhibit for which you accept responsibility is Exhibit No. 3, is that correct?

A. Yes, sir.

Q. I believe you said the break down for expenses, for example, was on this exhibit, was made according to the ICC Formula, is that correct?

A. The breakdown of the common expenses; all expenses were charged directly.

Q. Now, how did you arrive at the Passenger Service Operating Revenues, which are shown in Column (2) of Exhibit No. 3?

A. That is taken right from our Schedule 310 of the Annual [fol. 398] Report Form A; it shows Transportation Revenues—are you speaking of Expenses now?

Q. I'm speaking of Column (2), Passenger Service Operating Revenues.

A. That's taken from our 310, page 303 of Form A of the Annual Report to the Interstate Commerce Commission.

Q. In other words, on this exhibit, you show all revenue and not simply passenger revenue?

A. In Column (2)?

Q. Yes.

A. No, sir, just Passenger Service Revenue.

Q. You show Passenger Service Revenue, Baggage Revenue, Parlor and Chair Cars, Mail and Express, other passenger trains?

A. Yes, sir, we don't confine this to Account 102.

Q. Yes, that's what I wanted to make sure. Now, what do you mean by Passenger Operating Deficit?

A. Your Passenger Operating Deficit is your deficit taking the figures, passenger figures, expenses, I mean revenues, less expenses, less taxes, and taking into consideration the Equipment and Joint Facility Rents, and bring that down to Net Railway Operating Income—Passenger.

Q. The Passenger Deficit in 1960 was lower than it had been any time since 1955, was it not?

A. That is about right, yes, sir.

Q. You also have certain freight operations in the South-
[fol. 399] ern Railway Company, do you not?

A. We have some; they are quite extensive.

Q. As a matter of fact, those are sufficient, are they not, sir, to pay off the passenger deficit which you referred to, and still leave your company net railway operating income with some \$36,000,000 in 1960, is that not right?

A. That is correct.

Q. Now, the reason for that, of course, is the Interstate Commerce Commission considers the passenger deficit when it makes its freight rates, is that not correct?

A. I think it was stipulated at a previous hearing that some of the ex parte proceedings, that the passenger deficit of the carriers was considered in the Commission's decision on the increase.

Since the last hearing, there has been another ex parte increase, has there not? Something like Ex Parte 223. Is that not right?

A. Off the record, you should know.

Q. Off the record, Mr. Gleason and I had this same case 223 before.

A. Ex Parte 223 was effective, the effective date was October 24, 1960, for the ICC increases, and of course, we have had the hearings before the—yes, that's correct.

Q. In each of those proceedings of the Federal And State, where the passenger deficit, were the passenger deficits a matter of consideration?

[fol. 400] A. As I said, it was so stipulated by our attorneys; I'm sure that is correct.

Q. I'm talking about this particular one, 223, now.

A. Well, of course, I must state this; that I do not participate in the ICC cases; my participation was restricted solely to the intrastate proceeding before the State Commission.

Q. Do you have any reason to believe that it was not considered in Ex parte 223?

A. Yes, sir.

Q. When was the last time your railroad showed a profit from its passenger operation, if it ever did?

A. 1946.

Q. And showed one for the years 1942 through 1946?

A. That's correct; '42 through '46, four years.

Q. Are there any other years that your company showed a profit on the passenger operations?

A. 1941.

Q. In other words, '41 through '46?

A. That is correct, yes, sir.

Q. Are there any other years, that you showed a profit?

A. My records that I am looking at, only go back to the year, 1931.

Q. Is there any time in 1931 to 1961, except for the war years, 1941 through 1946?

A. They were the only years that they showed revenue in [fol. 401] excess of expenses.

Q. Now, in spite of this deficit on your passenger operations, has there been a year since 1931 when you have not shown an overall profit in your railroad business?

A. Now, you are taking this down to Net Income?

Q. Yes. Net Operating Income.

A. In Net Income, 1931, we had a deficit of five million; '32, eleven million; in '33, 810 thousand; '34, two million, eight; '35, one million, eight; and then skipping down to 1938, 570 thousand.

Q. I take it from your naming of the; I take it the remaining years, you have had net income?

A. Yes, sir, and this goes back to the year of '25.

Q. That goes back to 1925?

A. Yes.

Q. Would you give the figures on your net income for the years 1958 and '59 and '60?

A. Southern Railway Company?

Q. Southern Railway Company.

A. Net Income, Year 1958, is that your first year?

Q. Yes, sir.

A. Thirty million, two; '59, 33 million, one; 1960, thirty million even, seven.

Q. Now in order that the record may be clear: Net Income here as we are using it could be equated to profit from [fol. 402] operation of the railroad?

A. Yes, sir, we don't use profit, but that is the results of your operations, taking into consideration everything except your payment dividends.

Q. Does your company file a Federal Income Tax Return, based on the operations of its freight business, separately from the operations of its passenger business?

A. No, sir.

Q. In other words, any loss on the passenger operations off-set income from freight operations, for Federal Income Tax purposes?

A. Your passenger losses are taken into consideration in payment of taxes, yes, sir.

Q. By being able to off-set your passenger deficit, against your freight income, the real effect of such a transaction is to let the Federal Government pay for 52% of your passenger deficit, is it not?

A. Well, in effect, yes, sir; you are getting the tax credit for your losses on your passenger business; as I stated before, we don't want to lose money to preclude us from paying Federal Income Taxes, but they are taken into consideration when the taxes are paid.

Q. But when you consider the amount of the loss in dollars, the real loss would not be \$14,670,000, but would really be some 52% less?

A. That is correct, taking into consideration your taxes. [fol. 403] Q. And carrying it on down through your company operations to the particular train, any loss that you had is borne, 52%, the Federal Government, and 48% by your freight operations?

A. In effect, the United States Government, the IRS, loses out on a certain amount of taxes due to our losses on passenger service operation, that is true.

Q. Calling your attention now to Exhibits No. 24, do you have that with you? Before you?

A. Yes, sir.

Q. The figure of, at the bottom of Page 1 of Exhibit 4; Excuse me, I meant to say Page 1 of Exhibit 24; 17.7 reflects the average number of people that were on Train 13 on every trip that it made?

A. That is correct; regardless of how far they went.

Q. Now, the figure for Train 13, in 1960, is shown at the bottom of Sheet 3 of Exhibit 24, as being 19.3, is it not?

A. That's correct.

Q. And the figure for Train 13 for the first five months of 1961 is shown on the bottom of page 1 of Exhibit H 4 as being 29.0, is that correct?

A. That's correct.

Q. Does this mean that the average number of passengers on your train 13 has increased from 17.7 in 1959 to 19.3 in 1960, and then to 29 in the first five months of 1961?

A. Number-wise that is correct, Mr. Burns. I haven't [fol. 404] broken it down by train, by this particular train, but while your number of passengers have gone up, your average revenue per passenger, for both passengers, in 1959, was 139.211; '60, 143.36; and in a five months period, 119.241; which shows that we are getting more passengers, but we are carrying a tremendous number of children in these group movements; where the greater preponderance of them, the greater number of them are all travelling on half rates; we are carrying more passengers, but the revenue per passenger is dropping down.

The fact is that your increase is from 17.7 to 19.3, and now the 29; in numbers.

A. Yes, sir, in numbers.

Q. Would you figure out the percentage of increase of the 29 over the 19.3?

A. What's that again?

Q. Would you figure what percentage increase that is?

A. You want to take the 17.7—

Q. Either way; 17.7 or the 19.3.

A. That would be a nine per cent increase.

Q. That's the 19.3 over the 17.7?

A. That's correct.

Q. Would you figure the 29 passengers over the 19.3? It would be roughly 50 per cent, would it not?

A. Let me have that again.

Q. Figure the increase, 29 over 19.3; you are a little less than fifty per cent, but right at it.

[fol. 405] A. Number of passengers, 29 from 19.3.

Q. The first five months of this year over the full year of 1960.

A. Roughly, yes.

Q. So the increase of 1960 over '59, the number of people on the train every day, was nine per cent, and approximately 50%, '61 over 1960?

A. In numbers, yes, sir.

Q. All through here, when we are talking about number of people on the trains, we are not including pass riders, are we?

A. No, sir, we are not giving any consideration to non-revenue passengers.

Q. I believe in the last case there was some testimony to the effect that approximately seven per cent of your total passengers rode on passes; is that not correct?

A. That could be true; but, as I recall that case, there was no breakdown between personal passes or business passes. It was just a total number of people who rode the train for a certain period of time, and your figure of seven per cent could be correct, but we give no consideration to non-revenue passengers.

Q. Do you have any reason to believe that whatever percentage there was in the last case is any different today, as far as pass riders?

A. Could be the same.

[fol. 406] Q. Would you have any reason to believe that it would not be?

A. No, sir.

Q. Now, that is not reflected in the figures that we have here, though?

A. No, sir, because the company gets no revenue from the transportation of pass riders.

Q. How did you get to Raleigh for this hearing?

A. Came down on 29 and 16.

Q. Your use of that train would not be reflected in any figures that we had at the time you came?

A. No, sir. If I came in on Seaboard, I would have a pass too, and it wouldn't cost the company anything.

Q. Did the company get any benefit by having you attend this hearing?

A. That problematical.

Q. At any rate, the company assumes that it is going to get benefit by sending you down here, does it not?

A. I think definitely they will.

Q. If the company is to get benefit, they have to have you here in Raleigh instead of Washington.

A. For this particular case, yes, sir.

Q. And the same would be true of any of the other employees that the, any other employee of the company that use the train, this train, with a pass, would it not?

A. On business, yes. Of course, now, you must take into [fol. 407] consideration other railroad people of other foreign lines could be part of that seven per cent, getting passes through our pass bureau, as we get passes on other roads.

Q. You would have been, you would have come down on the Seaboard?

A. Yes, sir.

Q. The Southern Railway would benefit if you came on the Seaboard just as much as if you came on Train 16, would it not?

A. That's correct.

Q. You also might have flown, mightn't you?

A. Yes.

Q. You could have if you had wanted to, and had the railroad; I don't know whether they do or not; but at any rate, you could have gotten here by air?

A. That's true, yes, sir.

Q. If you had come by air, somebody would have had to pay for your ticket down here, would they not?

A. Yes, sir.

Q. Who would that somebody be?

A. Ultimately, the company; I would purchase the ticket, and put it on my expense account.

Q. Be reimbursed the price of the ticket?

A. Yes.

Q. And there again, the company would be benefited to some extent by your presence here?

A. That's right.

[fol. 408] Q. And by the use of the facilities to get you here?

A. Yes.

Q. Suppose the railroad suddenly decided that they were no longer going to permit people to ride on passes; do you think the employees of the railroad would be particularly happy about such a decision?

A. You mean all passes?

Q. Yes.

A. I'm sure that those travelling on personal trips would be unhappy; for us, it wouldn't matter too much; because we would be reimbursed for whatever money we paid for our transportation; but a person taking a vacation, as an example, if they could not ride on a pass, they would have to pay for that transportation, and I'm sure that they wouldn't be too elated about it.

Q. So one of the benefits of working for a railroad is being able to use a pass, is it not?

A. It is, for the employees who take trips, yes, sir.

Q. And if they did not have that advantage, it might be that the employees would seek some other advantage, is that not right?

A. I don't know; that's very problematical, too. I doubt seriously if many people are attracted to railroad employment on the basis of free transportation; that's my own personal opinion.

Q. At least the railroad employees do have the benefit of that for personal business?

[fol. 409] A. Yes, after they have fulfilled the required months, the required number of months and years in service, they are entitled to free transportation; on their own line and also foreign lines.

Q. On your Exhibit No. 24, again, looking at the figures this time for Train 16, do we not find an increase from 21.3 on Train 16 in 1959, a slight decrease to 21.0 in 1960, is that right?

A. That's right.

Q. And an ultimate figure of 30.1 passengers, daily average, is that right?

A. The five months of '61, yes, sir.

Q. Now, the increase of 1961 over '59 is again very close to 50 per cent, is it not?

A. Roughly it is; I might add that I made a study of the five months, January through May of 1961, and we had two thousand and twenty-four (2,024) people, children with their adult chaperones, travelling in groups of 44.5 per cent of your 4,550 utilizing the service of train 16 in that period; these group riders; I'm careful about using that term; group riders, children of kindergarten, church schools, Boy Scouts, and what not; I think that better expressed it than group riders.

Q. Did you, by any chance, talk to the management of Southern Railway and determine if that could, if they objected to carrying these children?

A. No, sir, my purpose in looking it up was; I personally [fol. 410] don't think that this comes under the concept of public convenience and necessity; that's why I made a study of it.

Q. In order to determine that, we want to know whether or not these; we would want to know where these children went, would we not; how many of them came to Raleigh, as part of their education, say the Capitol?

A. In March, there were 23 Scouts from Durham to Raleigh; and in May, various schools, the number of schools, 424 children from Durham to Raleigh, for a total of 447 of the 2,024, or roughly 22 per cent.

Q. All right, they came to Raleigh; now why did they come to Raleigh, to see the Legislature in session here at the State Capitol?

A. That may well have been.

Exam. Gibbons: I don't think it's necessary to find out why they came; the fact that they were on the train, I think that's all we are concerned with.

Mr. Burns: The only reason I'm going into this; I think you are quite right, sir; the only thing important is that they were on the train, but just because they were riding the train, didn't indicate that there was a public need for it. So, I was going into it a little further, to establish perhaps the reason for their coming here, and I think certainly that it's the policy of this state that the education of our children is a very important part of our state activity.

[fol. 411] Exam. Gibbons: I don't think the reason for the travel is too significant, so long as we have the number of riders on the train; whether it's little children or adults, doesn't make too much difference; as, except as affects the revenue.

Mr. Burns: I was going to ask Mr. Gleason, for the record, that, the fact that this would have the effect of diminishing the average revenue per passenger; that is true, is it not?

The Witness: That is true, yes, sir.

By Mr. Burns:

Q. Now, calling your attention to Exhibit No. 25; the figures which you show there indicate that the average passenger miles per train mile for the two trains combined have increased from 6.83 to, 6.83 in 1959, to 7.33 in 1960; and then to 9.97 in 1961; is that correct?

A. Yes, sir, the average did increase; but, as I point out here, average revenues per passenger decrease and your revenue per passenger mile decreased.

Q. Now, the average passenger revenue per train miles, for Trains 13 and 16, in 1959 was 21.067 cents; is that correct?

A. Yes, sir.

Q. In 1960, the corresponding figure was 22.382 cents, was it not?

A. Yes, sir.

Q. In 1961, it was 27.345?

A. Yes, sir.

Q. So there has been a steady increase in the average [fol. 412] passenger revenue per train mile?

A. That is true, but your average revenue per passenger has decreased, and so has your passenger revenue per passenger mile decreased.

Q. Now, you are talking about the average passenger revenue per passenger mile, is that right?

A. No, I'm speaking about the average revenue per passenger; what we receive from the carrying of each passenger.

Q. Have you made a computation based on the average passenger revenue per passenger mile, similar to that that you make in your annual reports to the ICC?

A. For these periods?

Q. For these trains and these periods.

A. Yes, sir.

Q. You have? Would you give me your figure for 1960 for these trains, the average passenger revenue per passenger mile?

A. The revenue per passenger mile for Trains 13 and 16, .0305, with a company average of .0296.

Q. And your average in North Carolina, as shown on page 903 of your annual Report to the North Carolina Utilities

Commission was .0301, was it not? Page 905. These are all in 1960. A Revenue per passenger mile for North Carolina is .0301; is that the figure you gave me?

Q. Yes. And so, Trains 13 and 16 have greater average passenger revenue per passenger mile in 1960 than did your [fol. 413] company as a whole, and also greater than your operations in North Carolina as a whole; is that not right?

A. In 1960, that is correct. And in the five months of 1961, the revenue per passenger mile for Trains 13 and 16 was .0274, and the company average is .0300. There again, I'm calling your attention to the impact of the school and kindergarten groups with the number of children travelling at half rate. So, it's below this period, the company average.

Q. What do you mean by the term "average passenger miles per train mile"—strike that out. Is the term "average passenger miles per train mile" a term used in filing your report to the Interstate Commerce Commission?

A. No, it's not included in our Schedule 531, or 931, to the State.

Q. What does that mean?

A. It means that you divide your total passenger miles; passenger miles might be explained as a passenger moving one mile; divide that figure by the total number of train miles operated, and that gives you a figure of people who have been on the train the entire distance. Now, this 19.5 includes people who got on at one place and went five, ten, or fifteen or twenty miles.

Q. On this train?

A. On this train; but the 6.83 are those who would have been on the entire distance, based on your train miles and passenger miles.

[fol. 414] Q. Now, of course, the important thing there is the distance that each passenger travels, is it not?

A. Yes, sir.

Q. If you had, for example, a train with a route 100 miles long, and it took 100 people just ten miles each day, and didn't carry anybody the rest of the way, that would have the effect of reducing the average passenger mile per train mile substantially, would it not?

A. Yes, sir.

Q. But it wouldn't show any lack of need on the part of people who use the train to go ten miles; would it?

A. There again, you have to develop the need of these people going ten miles. You get into; it could well mean that these people actually needed the service; or it could mean that they were just travelling—

Q. This figure in itself doesn't indicate anything at all about the need of the people that are actually using the train?

A. No, not the need, but it shows the use.

Q. On your exhibit No. 26, the only difference that I can see between your Exhibit No. 26 and Exhibit H 6, is the last, or bottom line, all the way across the page.

A. The reason I did that was because through our machines we are able to reproduce the statements, so rather than just have a statement showing five months, I merely incorporated at the bottom of my original Exhibit 26, showing the full picture on Exhibit H 6.

[fol. 415] Q. Well, looking at Exhibit H 6, since it has all the information on it, including the information on Exhibit 26, the average number of passengers per trip for the Trains 13 and 16, for the first five months of 1961, is higher than at any time since 1953, is that correct?

A. That is correct.

Q. And calling your attention to Exhibit 27, the figures which you show on that Exhibit for the year 1959, are summaries of figures in Exhibit 28?

A. No, sir, that's a different year; we didn't think it necessary to make two calendar years in the NARUC Formula, with those ten schedules, so we made 1959 as a one-sheet exhibit in sort of a summary form.

Q. Were these arrived at by using the NARUC Formula?

A. Yes.

Q. What is the NARUC Formula?

I'll strike that question.

A. It's a special committee; Report of the special committee in cooperation with the ICC in the study of the railroad passenger deficit problem, adopted by the National Association of Railroads and Utilities Commissions at New York City, September 23, 1953, published by the NARUC, the National Association of Railroads; this is the formula that is embodied in this report.

Q. Is that report binding on the Interstate Commerce Commission?

[fol. 416] A. There again, I don't know.

Mr. Dixon: We will concede it's not.

By Mr. Burns:

Q. The purpose of that report was to provide a short cut for the railroad in presenting expenses relating to a particular passenger train, is that not correct?

A. I would rather say provide a uniform approach, as we had these cases prior to this September 23, 1953; this NARUC Formula is much more elaborate, as the previous showings made before this was adopted; it gave us a uniform approach in the presentation of train cases before the regulatory bodies.

Q. One of the regulatory bodies not approving that was the North Carolina Utilities Commission, was it not?

A. I believe that was so stated at the previous hearing; this is adopted by the Association in convention. How many individual Commissions have adopted, I'm not in a position to say.

Q. Let's go on over to your Exhibit 28. Sheet 1 is a summary of the succeeding schedules, is it not?

A. Yes, sir.

Q. And the Passenger Revenue you show at the top for the Year 1960, for the two trains is \$21,135; and was arrived at in what manner?

A. As explained on Page 28 of the Petition, Account 102—Passenger; "Tickets lifted by conductor are punched into IBM cards showing station to station, class of passage and other information. These cards are processed through the computer which is programmed to compute the passenger [fol. 417] revenue based on authorized rate for class of passage."

Q. Boiling all that down, what you did is essentially this; you took the total revenue paid by the passenger and applied a mileage pro-rate, isn't that what you did?

A. A block to block mileage.

Q. What size blocks are those mileage blocks that you use?

A. I, of course, didn't do this myself. This was done at the Auditor of Passenger Accounts' office. This information was furnished me.

Q. Do you know whether they are very big or very small; ten miles, a hundred miles, a thousand miles?

A. I think they are station to station; that's the way the mileage blocks are. They would have to be because of these people travelling small distances to apply to their short run tickets.

Q. In order to apply a pro-rate, you had to know what the total revenue generated by all passengers originating or terminating on this line, did you not?

A. No, I wouldn't say so. I think it is computed right from the tickets lifted right from the conductor; the information is punched on the IBM cards; right from these tickets that the conductor lifts.

Q. Well, the ticket shows where the passenger originated and terminated and how much he paid for the ticket, doesn't it?

A. Yes.

[fol. 418] Q. So you would know what the total is to apply your mileage pro-rate?

A. From station to station.

Q. You would have to know the total to know what the pro-rate is, is that right?

A. Yes.

Q. Is the total of all passenger revenue that shown on Exhibits 29 and H 8; is that the total figure?

A. That's the total of your Off Line Revenue; it doesn't include this On Line Revenue.

Q. The figures that you show on 29, plus the figure that you show on Schedule 1 of Exhibit 28, I believe it is, would be the total revenue that your passengers pay for riding a part of which was using this line?

A. Generated by people either in-training or de-training.

Q. Is that the way, on Exhibit 29, the figure on Exhibit 29 was arrived at?

A. Now, this figure on Exhibit 29 is a figure taken; I got to explain how this happens; in order to do this, you've got to set up a process a head of time and trap these tickets as they come in. And they are then able, when they get

the tickets, the traffic on this Greensboro to Goldsboro segment, and then to compute the revenue for those going beyond the Greensboro—going north or going south.

Q. When did you set up the program for these two trains? [fol. 419] A. I think it was in July of 1959.

Q. And it's been running ever since, pulling every ticket that goes on and off these trains?

A. Yes, sir.

Q. As I understand it, you applied a mileage pro-rate to determine the Off Line and a mileage pro-rate to determine the On Line portion of the revenue, is that correct?

A. I don't know whether I am making myself clear; but on this programming, this program is set up; it is already in the machine, and they have these block to block, station to station, items in there, and also it is a class of traffic—coach, first class, 30 day, or round trip, family plan; and when the ticket is punched, the 705 automatically computes the revenue for the segment on this line, and of course, ultimate lines, too.

Q. In other words, the same process is used to divide the On Line and Off Line Revenues?

A. I would say so, yes.

Q. Do you have any figure that would show the amount of revenue that would be lost by other railroads if these two trains were discontinued, and all the passengers went to some other modes of transportation?

A. Your supposition is that if these trains go off, the company will get no off line revenue, and then all those passengers, say, going beyond Washington to New York, Pennsylvania, no.

Q. You could determine that also from the feeding, in [fol. 420] your 705 computer, could you not?

A. It could be determined, but I certainly wouldn't want to have the job.

Q. You could determine the total that would be lost by other railroads, simply by taking the total that you get and subtracting it from the total that was paid, couldn't you?

A. I don't think it would quite be that simple; I think it would be sort of a voluminous job; of course, I'm not a passenger accounting man; I'm not familiar with all the

facets of the passenger problem, as some of our passenger folks.

Q. Of course, though, in addition to other railroads, the Pullman Company might use a little bit, wouldn't they?

A. On the premise that it goes on this traffic, I would say that the predominance of the traffic going off this segment is Pullman or first class traffic.

Q. So there would be a loss in some indeterminable amount?

A. If your assumption is correct.

Q. To the extent that you lose any, the Pullman Company would lose, too, wouldn't they?

A. Yes.

Q. In your express revenue, as shown on your Schedule 2, or Schedule 3, of Exhibit—what is it—28?

A. That's right.

Q. What you have done is taken Car Foot Miles for the Southern Railway Company, and divided into the Southern [fol. 421] Company's revenue and come up with Average Revenue per Car Foot Mile, is that not right?

A. That's right.

Q. How do you determine a Car Foot Mile?

A. A Car Foot Mile is a linear foot, the length of the car, and the number of miles a car travels is a Car Foot Mile; we know, each month we get the express revenue from the REA, and the company knows through our statistics and reports, the number of Car Foot Miles we serve the REA on our line, the Southern Railway Company; and it's a simple calculation to divide one by the other to get the average car foot mile; and that is applied to the car foot miles on these particular trains; we also know that, and that gives us the express revenue. That's the only way you can compute it because we don't have records to show individual trains; how much express is handled on individual trains.

Q. In other words, you don't know how much is handled, or how much the Railway Express earned on the handling of that traffic?

A. No, because they take all the revenues, they deduct from that their expenses, plus a return on investment and the revenue is distributed to all the member lines on the basis of a user basis, the car foot miles that they furnish

the REA during the particular month or period; that's generally.

Q. Now, the revenue that is distributed, the portion that's earned by this particular train has been credited back into [fol. 422] the revenue figures that you show here?

A. As shown in my exhibit, yes.

Q. You don't know whether or not the particular train that we have in question is one that's doing a whale of a lot of express business, or none at all, do you?

A. It could be determined by ascertaining the requirements; you see, the REA issue requirements or requests on the company to furnish space in their cars; and as I understand it, that is constantly being changed; they drop it down and raise it up, depending on the volume of their business.

Q. You mean volume in size, do you not?

A. Yes. Say, they got 20 foot; and find that 20 foot is not adequate; sixty foot and that's not adequate; well, then they make another request and maybe they raise it to 80 or some other figure.

Q. As far as the railroad is concerned, does it make any difference whether they are carrying diamonds or feathers in that car?

A. We don't care if they order a 60 foot car, whether they fill it or not.

Q. Well, one figure that is used on the Schedule fascinates me; it's the figures of Miles Operated for December of 1960; would you tell me how you arrived at the figure of 3979; that's Schedule 3.

A. I haven't been associated with you all these many [fol. 423] months without determining that you find out these things; now, December 14, 1960, we had a terrific snow storm on the eastern coast, and the Pennsylvania connection coming to Washington was many, many hours behind. So, when the 29 got to Greensboro, it was so late that the 16 took it over, and by the time that it got to Selma, it was time to come back; so the December 14th, 1960 only operated Greensboro to Selma, and the passengers were taken care of by private cars. Only you would notice that.

Q. That does affect the total revenue, does it not?

A. It does.

Q. Well, wait a minute now; since you operated twenty miles less, you've got 20 miles of car feet that would not be used if you were multiplying by the average revenue of the car foot mile.

A. Yes.

Q. Now, the other; you show no other revenues from baggage or handling pets or anything for these two trains, is that correct?

A. Each passenger is allowed 150 pounds of checkable baggage.

Q. So, I assume that you had no other kind of revenue except express and passenger.

A. And miscellaneous. A certain amount of newspapers.

Q. You did not carry any mail on this, did you?

A. No, sir, the mail went off September 14, 1957.

Q. How many express cars do you have on this train?

[fol. 424] A. Speaking now?

Q. Now.

A. Right now, we have a combine express, the Express Company has space there.

Q. What do you mean by a combine?

A. Combination baggage and passenger; half of the car has seats for passengers, and the other half has open space for baggage and express.

Q. Was that reduced since February 24th, 1961?

A. I understand the entire run, Greensboro-Goldsboro car, went off in January, and we had a Burlington, Greensboro-Burlington car, went off in, sometime in February.

Q. And so the railroad no longer provides facilities for Burlington, is that right, for express?

A. Well, I can't say the car goes to Burlington; and they have 20 foot of space in the car; and they could use it if they so desired.

Q. The thing that has caused the reduction in revenue of this train over the years has been the loss of the mail contract with the Government, and now the loss of all your express business to trucks operated by the REA?

A. Plus the loss of passenger rate, too.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: Back on the record.

[fol. 425] Mr. Burns: My opinion is because of the eating facilities here, it would require an hour and a half for most of the gentlemen to get their lunch and get back.

Exam. Gibbons: Let's compromise and get back, return at 1:45.

We will recess until 1:45 p.m.

(Whereupon, a noon recess was taken until 1:45 p.m.)

[fol. 426]

Afternoon Session

(1:45 p.m.)

Exam. Gibbons: On the record.

The hearing will come to order.

Mr. Burns: Before going back to where we left off, Mr. Gleason, there seems to be some misunderstanding about one of the figures that you gave me this morning; that being the Net Income Figures for the entire Southern Railway Company, which you gave me for certain years this morning?

A. The Witness: Yes, sir.

By Mr. Burns:

Q. When you used the term Net Income, you mean after all taxes, do you not?

A. Everything.

Q. And that figure is after everything except what dividends the company elects to allow shareholders?

A. Yes, sir.

Q. Thank you.

Now, going back; I think we are on Schedule 4 of Exhibit 28. Do you have that before you, sir?

A. Yes, sir.

Q. That schedule consists of two pages, does it not?

A. Schedule 4 is four pages.

Q. Four pages, yes. The Sheet 3 shows the Crew Wage Expenses Per Trip for Train 13, does it not?

A. Yes.

Q. On that sheet, I notice the miles per trip vary from 130 in the case of the Engineer and the Firemen, to 150 in [fol. 427] the case of Conductor, Flagman, and Baggage-master. What's the reason for that variance?

A. The Engineer and Firemen are paid for the trip up to the yard, beyond the station; and of course, the Conductor, Flagman, and Baggage-master are paid on a 150 mile guarantee.

Q. Is that a daily guarantee?

A. There is, they are guaranteed 150 miles a day.

Q. Are they also guaranteed 90 cents in addition to the 150 miles?

A. Yes, sir, if I may explain that. Taking your first man, the Conductor; he gets 13.76 cents per mile or \$20.64 per day. Now, his daily guarantee is \$21.54; so he gets 90¢ on top of that \$20.64; in addition to that, he gets an hour's overtime.

Q. And the hour overtime, I believe you said a minute ago, is for the purpose of taking it and turning it around?

A. Yes, sir.

Q. So the effect of the existing wage contracts are to include payment for 150 miles and since that does not come up to a minimum dollar guarantee per day, they get an additional 90¢?

A. Yes.

Q. And the hour overtime is for the purpose of turning the train around?

A. Yes.

And then, I might say that effective March, '61, the basic salary has gone up; the current rate per mile is going to 14.034.

[fol. 428] Q. And the hour overtime is the thing that makes the difference in the wage expenses of Trains 13 and 16?

A. That is correct; 16 gets the 90¢ along with 13, but they don't get the hour overtime.

Q. That's the reason why the wage expense of one train is some \$4,000 a year less?

A. That's correct.

Q. On your Schedules 5, 6, 7, 8, 9; 9. I should stop there; are the figures on those schedules all determined by the use of the NARUC Formula?

A. Yes, sir, the averages.

Q. The effect of the formula, Mr. Gleason, is to take System or Company figures on a mileage basis, and apply them to the local trains, is that not correct?

A. You arrive at a unit mileage cost; and to that unit mileage cost, you apply the miles made by the trains in question.

Q. In all of these cases, you took your Southern Railway Company figures, did you not?

A. Yes. I might say we have to be very careful; most people speak of a system as the whole company; and we have a system and a company; so we have to differentiate, so we have to be sure that we know what we are talking about. The Southern Company—

Q. To repeat the question, I think we are in agreement; the Southern Railway Company, you used Southern Railway Company figures?

A. Yes.

Q. And reduced those to a mileage basis?

A. To a cost per mile.

Q. Then multiplied the cost per mile by the number of miles operated or covered by these trains?

A. Locomotive and passenger car.

Q. The effect of this procedure is to assume that costs on this particular train are no greater or no less than costs on any other train operated by the Southern Railway Company?

A. Yes, sir, that's the assumption you have to make because there is no way for us to confine cost to one particular segment of our operation; so you have to use, make that assumption, use the company average.

Q. I take it that this same assumption could be made as far as freight is concerned; that one mile of track has the same amount of revenue and expenses associated with it as any other mile of track on the South Railway System?

A. I believe that's fair. You are speaking of cost now, not revenue.

Q. On your Schedule 5, as an illustration, you assume that the cost of fuel for the trains operating between Greensboro and Goldsboro, is the same as the cost of fuel

to New Orleans or in Atlanta, or any other point on the Southern Railway Company?

A. That's the assumption I made by using the company [fol. 430] cost per gallon, each month it changes; but in addition to that, I made a study of the cost of fuel as used by these locomotives, and I got the invoices, and using the twelve month, or individual month cost, in place of what I did use here, instead of \$5,622 the cost would have been \$5,644, using these individual invoices. So, the assumption there is, the level is practically the same. I used the invoices for the Diesel fuel used on these locomotives that's purchased and delivered for consumption by these trains, and of course, other trains in this area.

Q. How did you get those figures for that?

A. I went through, to our Purchasing Department; Gulf Oil Corporation furnishes us fuel; the Division Storekeeper at Greensboro, they had the price of the fuel per gallon right on the invoice, and using those prices instead of the company average, the difference would have been just \$22; for instance, January, the average fuel cost per gallon, \$8.80; this was \$8.95; and as you go down, they are up and down and level themselves off as you go along, so the difference for each train would have been \$22; \$5,644 as against \$5,622.

Q. In this particular case, then, the assumption that the system averages would reflect cost of one train.

A. In this particular instance, yes.

Q. Turning to your Exhibit 6, I take it that the same basic Schedule 6, excuse me; the same basic procedure [fol. 431] was followed; that is, reducing everything to a per mile cost, and then applying it to—

A. The different items of expenses.

Q. What tests did you make of this item, to show that it would be reasonable for application?

A. I made no test. It was very simple for me to get the invoices to determine whether the cost of fuel used by these locomotives would be comparable, or—

Q. Enginehouse expenses include some things that would vary with locality, would they not?

A. I wouldn't say so, no, sir.

Q. On your Schedule 7, would you please tell me where you got the figures, Total Passenger Train Car Miles, 60,882,395, from?

A. That's the total passenger train miles for the Southern Railway in the year 1960.

Q. Does that appear in the annual report that you filed with the ICC? Maybe I can simplify it; would you turn to Line 24, on Schedule 531 of the Annual Report to the ICC, for 1960?

A. This shows to be 60,762,546; but that, if that figure is slightly different from Schedule 531, that is merely to determine the average cost per year; so it shows 2.131¢, and as you start down with January, you get 2.317, 2.364; this is to show that your yearly average is in line with your monthly averages, average expense per passenger train mile.

[fol. 432] Q. In other words, you didn't use that figure?

A. No, sir, each individual month is worked on the individual miles and charges to the various operating expense of each month.

Q. And that figure was not used?

A. No, sir, that's just to show that the averages are in line.

Q. Would you turn to Schedule 8 for a moment; calling your attention again to the figure at the bottom of the page, Total Passenger Train Car Repair Miles, and tell me the source of that figure; maybe I could rephrase the questions; why would that figure be different from the figure that we have just talked about on the preceding schedule?

A. Well, in Schedule 7, we are including all equipment in Pullman and foreign lines. And you get over here in Schedule 8, we do not include any cost for foreign lines and pullman cars for these repairs. See, we are not obligated to repair foreign line cars, pullman cars; if we do repair them, we bill the owners and are reimbursed; so that wouldn't be a proper cost.

Q. And so you excluded all of those miles from your computation which have the effect of increasing the per mile cost; whether it's right or wrong, that's the effect of it, isn't it?

A. Yes, that's right.

Q. Again, on Schedule 7 and 8, did you make any study of the particular line as far as cost are concerned, to deter-[fol. 433] mine the reasonableness of the application of the NARUC Formula?

A. No, sir; in fact, it would be impossible for us to make any such test.

Q. So, really, what we have is a mileage pro-rate on these various items?

A. Yes, conformative with the formula of the NARUC, yes, sir.

Q. Insofar as your application of certain savings from discontinuance of Passenger Trains 13 and 16 at Goldsboro, isn't it a fact that the Goldsboro Union Station is owned one-third by Southern Railway and one-third by Seaboard and one-third by ACL? I don't mean by Seaboard, I mean one-third by Southern; ACL, and one-third by someone else?

A. That's my understanding, yes, sir.

Q. So your ownership would be retained; whether or not you had, you operated any cars or not?

A. Yes, I made inquiries about that, and I, of our joint facility folks, that when we pull out, if we do pull out, and discontinue this train, we would have no more cost there except the only cost would be incurred if there was some major repairs to the property, and Southern Railway agreed to participate; other than that, we would have no further cost there, and there was to be nothing done until—if everything left Goldsboro, and the place was liquidated.

Q. Of course, you are going to continue your freight operation to Goldsboro?

[fol. 434] A. I assume so, yes.

Q. Any office space or anything like that you use at the station for your freight operation will be maintained?

A. This is strictly the passenger cost at Goldsboro; this is taken from the Operating Statement furnished to the Goldsboro Union Station; to the owners and tenants each month, showing all the expenses, from those expenses, whatever concessionaires occupy space in the building, the costs are thereby reduced, and to those costs, the lines using the facilities are charged on a per car basis.

Q. On a per car basis?

A. Yes.

Q. Well, one other particular item of expense I want to ask you about; is your pullman company, net loss. Now, as I understand it, setting some sort of loss from the operation of these cars against these particular trains, is that right?

A. Then let me explain it this way; each month, the Pullman Company furnishes us with a statement showing revenues; first it shows, these lines are operated by line numbers, so the one we have here under question is line 6854, New York to Raleigh; it operates Trains. 29 to Greensboro, 16 to Raleigh, and then 13 and 38 in the reverse direction. The Pullman Company shows the revenues they received from the revenue passengers and the expenses; and it shows the net; then as this line extends from Washington to Raleigh on Southern Railway, I have used a mileage pro-[fol. 435] rate from Raleigh to Greensboro to assess against deficit, to show what this \$4,226, now, our first class revenue we received from these passengers is in 102.

Q. Your portion of that revenue, not the Pullman?

A. No, the Pullman Company is in the first two figures; they furnish us; they furnish revenue, expenses, and that.

Q. It's a fact that Southern Railway is a large stockholder or a stockholder in the Pullman Company, is it not?

A. A stockholder, yes, sir.

Q. As a matter of fact, according to your annual report in 1960, you received \$89,532 in dividends from the Pullman Company for 1960, did you not; I refer particularly to Line 37 of Schedule 205, on page 211 of your 1960 Annual Report; page 211, Line 37.

A. \$89,532. Now, if I can find that; I don't have the Pullman yearly figures for 1960; I took the year 1959 figures and that \$67,149; took the total car miles and then I took the New York and Raleigh Car miles and related one to the other, and the New York-Raleigh operation was 2.15 per cent of this car miles, and I applied that 2.15% to the dividend of \$67,149 and it gave me \$1444. and 22% of the Greensboro-Raleigh segment from the car mile standpoint, \$321 net dividend would be applicable to this line on a car mile basis.

Q. Instead of using car miles, you used miles of passenger road, 4.5% of the \$89,532 in 1960 would be applicable to this segment of the road, would it not?

[fol. 436] A. Using what?

Q. The actual passenger miles of road that you had for your company.

A. Miles, passenger miles, you would arrive at—

Q. 4.46%. Total miles of passenger road.

A. I don't think that would be a proper thing to use; I think the proper thing to use would be the total pullman car miles of the Southern Railway Company, and take the percentage of the New York-Raleigh Pullman car miles on this run, to arrive at a 2.15%, and apply that to your dividend of \$67,000, and it would result in say, \$1444, and you apply the 22% of the Greensboro-Raleigh segment, it would give you \$321. I think that would be the better approach.

Q. The fact is though that your figures do not reflect any of that saving?

A. No, sir.

Q. And you are getting about a ten percent return on your investment from the Pullman Company?

A. It amounts to—

Q. In 1960, you received \$89,532 in dividends on an investment of \$828,171, did you not?

A. That's probably about right; they seem to be liquidating their surplus account, and that's not—the Pullman Company, each year; that's not out of earnings, because your earnings only amount to \$325,000.

[fol. 437] Q. I think you did agree with me at the last hearing, and I can find the place in the record if you like, but when you did pay the Pullman Company for what you call a net loss in your exhibit, that was, in effect, making a down payment on your dividend?

A. We were receiving some return, I would say about \$300; it was on a car mile basis; yes, sir.

Q. Calling your attention once again, to Exhibit 28, no, No. 29: did you make any study to determine that operating costs Off Line would be anywhere near 50% of your Off Line Revenue?

A. No, sir, that's why we used the 50%, because we have nothing to go on, as far as operating costs were concerned.

Q. In other words, it could be more; could be less?

A. I would think, I would say it would be more in this respect, because the 50% used in the abandonment cases is freight abandonment, while I would say, in passenger cases, well, your freight ratio is 61.67% and your passenger ratio is 143.72; so using 50% for freight ratio in abandonment cases, it seemed that the passenger ratio should be higher.

Q. You are talking about operating ratio there?

A. Yes, sir.

Q. Of course, the additional expense created by these passengers on the main line would relate only to the additional expense of pulling one or maybe two cars from Greensboro to wherever they are going, is that right?

[fol. 438] A. That's true, of course, but in your passenger cost, you have your tremendous terminal cost, which really boosts your costs up.

Q. You mean the terminals that were built in; these are the great terminals which are no longer needed for that type of traffic?

A. If I may digress, the highest tax property in the City of Washington is the Union Station, 1960, 9.2-million dollars, and we have to pay taxes on that.

Q. Maybe; we offered it to the Government for free, for nominal lease, and they wouldn't take it.

Exam. Gibbons: I thought the Union Station was second. Mr. Burns: I'm sorry.

The Witness: I'm talking about the Union Station property in 1960, was number one; but in 1961, the Towers Apartments have passed it tax-wise, assessments.

Mr. Burns: There ought to be a moral there somewhere; I'm grasping for it, but I can't find it right now.

I believe that's all the questions I have Mr. Gleason.

By Mr. Bryant:

Q. Mr. Gleason, I believe you characterized your position as Supervisory Statistician?

A. Yes, sir.

Q. Then you have occupied that position for a number of years?

A. The last three years, I have been Supervisor of Statisticians; prior to that, about six or seven, I was a Statistician.

[fol. 439] Q. Would you be kind enough to explain for the record and for me too, what the term Supervisor of Statisticians means?

A. I have an office force of four statisticians, several assistant statisticians, and several clerks, that report to me and I in turn report to the Director of Statistics and Reports. My job is to prepare statistical information for management as they need it, costing out various elements that appear before the Interstate Commerce Commission, and all the various state regulatory bodies which are of interest to the company. This falls within that—our rate cases, abandonment cases, and routings.

Q. As I understand it, statistics pertaining to the entire operation of the Southern Railway Company, come under your supervision, and—

A. No, sir, that's not correct; they would be more under the direction of the Director of Statistics, who is my immediate superior, or supervisor; he is the one that makes the preparation of all the reports that go to the Interstate Commerce Commission; the Association of American Railroads, and various state reports, and of course all these reports are available to me and my office people for use.

Q. You do either collect yourself, or have available to you, the statistics pertaining—

A. Yes, sir, available to me.

Q. May I ask you please, to refer to your Exhibit H 4, [fol. 440] page 1. It is the exhibit supplementing your Exhibit 24. I believe that that shows that during the first five months' operation of this year, January through May of 1961, 1,515 people boarded Train 13 in Durham, and 394 departed from Train 13 in Durham?

A. That's right, sir.

Q. That would make a total, I believe, of 1,909?

A. That is about right, sir.

Q. And on your page 2 of your H 4, shows that at the same station, 657 boarded the train and 1,148, during that same period of five months, left the train?

A. That is correct, sir.

Q. And that would make a total, according to my calculations, 1,805?

A. Yes, sir.

Q. And that added to Train 13, would give you a total of 3,714, would it not?

A. I got some computations I'm trying to find here; what was that given figure again?

Q. 3,714.

A. What are those two figures again?

Q. 1,909 on Train 13, is that correct?

A. You have the computations for 1959 and '60; I didn't make any computations for the five months period.

Q. I'm directing your attention to your Exhibit H 4 for [fol. 441] the five months.

A. I follow you now.

Q. Is the figure of 3,714 correct for the total passengers on and off the train at Durham, for Trains 13 and 16, for a five months period?

A. Yes, sir.

Q. Now, Mr. Gleason, if you used that as a monthly average for a twelve month period, that would give you a total of 8,916, would it not?

A. That's correct, sir.

Q. Now, if you turn to your Exhibit 4, as attached to your Petition, in which you give the population of the entire county of Durham, not the city alone now, but the county of Durham, 111,995—

A. Mr. Bryant, I've got to tell you right now, I didn't prepare these figures; so I am not familiar with them.

Q. I understand that you did not; but I say—

A. What is this exhibit, No. 4?

Q. Exhibit 4, please. The 1960 population of Durham in your Exhibit 4 is listed as 111,995?

A. Yes, sir.

Q. If you assume that figure is correct, that would mean, would it not, that approximately a figure equivalent to 8% of the entire population of Durham County, either boarded or got off of these two trains in Durham during the course of the year, would it not?

[fol. 442] A. Mr. Bryant, assuming that this level of traffic for five months would continue for twelve months, your figure of 8,816 is correct.

Q. 8,916 I believe.

A. Now, I don't think that is a fair assumption because as I stated, on Train 16 for these five months, we had 2,024 school groups, and this was in this particular five months; and I'm sure that these school groups and kindergarten groups and church groups would not continue for the rest of the year; so I think that 8,916 would be overstated.

Q. Now, Mr. Gleason, that would be a matter of argument; there might be athletic groups, for athletic contests, and other groups in the fall of the year; and I am asking you if you assume this as an average?

A. If your assumption is correct.

Q. It would be a figure equivalent to 8% of the entire population of Durham County.

A. Yes, sir.

Q. Now, sir, I want to ask you if you will look on your Exhibit No. 26, and there I believe you show that for the combined operation of Trains 13 and 16, you had an average number of passengers for the year 1959 of 19.52?

A. Yes, sir.

Q. And for the year 1960, an average for the two trains of 20.19?

A. Yes, sir.

[fol. 443] Q. Now, your Schedule H 6, I believe, shows the first five months of 1961, and has an average of 29.58, does it not?

A. Yes, sir.

Q. I understand of course, that you do not admit that the average would continue, but if you would assume that the five months of 1961 average did continue, that would give you an increase in 1961, over 1960, of approximately 46.5%, would it not? Take your figure of 20.19, which you have testified was the average for 1960—

A. Yes, sir.

Q. Then take the figure of 29.58, the average for 1961; the first five months; and what increase, what percentage increase does that represent?

A. About a 45% increase.

Q. Isn't it, to be exact, about 46.5%?

A. That is assuming that the level of traffic for the five months would persist for the next seven months.

Q. But taking your own figures; I mean, you have that percentage as a result of your own figures shown on your schedule, made by you, does it not?

A. That's correct, yes, sir.

Q. Now, Mr. Gleason, do you know it to be a fact, or do you not know it to be a fact, that at one time there were three passenger trains each way, east and west, going between, operating in and out of Durham; that is, six passenger trains?

[fol. 444] A. That's true.

Q. And by petition to the Utilities Commission of North Carolina, that has been reduced now to the current, to the point where there are only two trains going through Durham a day, one eastbound and one westbound; one being 16 and one being 13; is that correct?

A. Yes, sir.

Q. And do you know it to be a fact, sir, that Durham, with a population in excess of 78,000 people, if these two trains were removed, would be entirely without any rail passenger service of any kind in any direction?

A. If these trains were taken off, yes, sir, there would be no passenger service to Durham.

Q. Now, Mr. Gleason, are you aware of the decision of the Supreme Court of North Carolina in this case in which the question of the continuance of these two trains went to the Supreme Court of North Carolina?

A. Well, I have seen it; not being a lawyer, I'm not too well versed on it, but I did testify in the proceedings before the Utilities Commission.

Q. Can you tell me one thing, Mr. Gleason, that the Southern Railway Company has done to popularize its passenger service in or out of Durham since the rendition of that decision?

A. Sir, I have to tell you as an accounting man, I would know nothing about the activities, except in a general way [fol. 445] about the activities; all that solicitation comes out of supervision.

Q. While I thoroughly appreciate the fact that there are other departments, and your duties give you somewhat different fields, I'm asking you as head of the statistics

Department, having supervision of the expenditures, and the statistics relating to expenditures, if you know of one penny that has been spent or one thing that has been done to popularize or improve the train service that goes out of Durham since that decision?

A. No, sir, I wouldn't know, because I wouldn't go into; I wouldn't know what goes into charges; say, the traffic advertising and the particular facets, they take care of. You see, that's entirely different.

Q. Now, Mr. Gleason, going to another subject please; you stated that certain passenger trains to your knowledge have been discontinued in and out of Durham, so that leaves only two left; can you tell us on how many different occasions the Utilities Commission for the State of North Carolina, have permitted increases in freight rates in order to compensate or make an effort to compensate for losses in passenger service, on this particular route, from Greensboro to Goldsboro?

A. Well, I don't think in those ex parte proceedings this particular route was given any special consideration; when the railroads applied to the ICC for permission to increase their interstate rates and they were granted certain consideration; and then we went to the various interstate regulatory bodies to get the intrastate. Do you want the number of times that we—

Q. No, sir, I'm asking you if you could tell us the number of times—yes, that's what I want, the number of times; I'm asking if you can tell me the number of times that the North Carolina Utilities Commission has permitted an increase in freight rates in order to take care of the losses of passenger traffic?

A. I don't think it was primarily to take care of losses in passenger traffic; we submitted data to show the increased cost, wages, supplies, materials, and other costs like that; while also; they were the primary information furnished the Commission; as to the number of times, I just recently finished with Mr. Burns in Ex Parte 223, I don't know how successful we are going to be on that one; the one previous to that was 212, 206, 206A, 196 and 175.

to my knowledge; now there are some more than that that I participated in, though.

Q. Do I understand that that totals four or six, as I counted them?

A. 175, 196, 206, 206A, 212, 223—six.

Q. Six. So, on at least six different occasions; what period of years does that cover, approximately, if you can give it to us?

A. 175, that was a series of increases, starting in March of '51, extending to August of '53; November of '55, rather. [fol. 447] 196 was in 1956.

Q. Excuse me, do I understand that the first one was in 1955?

A. 1955 was the last effective date of Ex Parte 175.

Q. That is; then, is it correct to say that over the period of the last six years—

A. I would say ten years; 175 goes back to 1951.

Q. That's about the figure of ten years. During the past ten years, there have been six occasions on which the Utilities Commission of North Carolina has approved freight rate increases for the Southern Railway Company?

A. To some extent, yes, sir.

Q. And in each of those six instances, the loss in passenger revenues was assigned as one of the reasons why the increase in the freight rates should be granted, is that correct?

A. I'm not sure about the State Commission, but I know the ICC considered the passenger losses; as to the state cases, statistical data I furnished was always based on increased costs—labor, material, and whatnot.

Q. And in each of the six cases, to which you have referred, the loss in passenger revenues was one of the reasons assigned for the increase in freight rates?

A. In ICC proceedings, yes, sir.

Q. Are you familiar with the Luckett Formula, and if so, I want to ask you if that does not have special provisions for taking care of the decrease in passenger revenues? [fol. 448]

A. I'm familiar with it, but the fact, as your colleague on your right knows, I presented at the last—I would say yes, it's considered in that.

Q. May I go to another subject please. What was the Southern Railway Company's trackage in 1960, in number of miles?

A. 6,266.

Q. 6,266. Now, Mr. Gleason, what is the trackage in mileage on this route from Greensboro to Goldsboro?

A. 129, using station to station; and 130 when you go around the yard—I'd say 129.

Q. All right; I apologize for asking a question which I could figure out myself if given time; but do you know what the percentage of the total trackage that is represented by this route from Greensboro to Goldsboro?

A. Round figures, ten per cent.

Q. I'm afraid I can't follow; you said total trackage was 6,000—

A. I thought you were referring to the total North Carolina trackage; and the total trackage of this segment.

Q. No, I didn't make my question clear; what I intended to ask you was the percentage of this trackage of the route from Greensboro to Goldsboro to the total trackage of your company?

A. You will have to pardon me while I go through all of this record.

Q. Take your time; I'm interested in getting it accurate, too.

[fol. 449] A. 6,266.

Q. Yes, that's what you testified.

A. And the North Carolina mileage is 1,000—oh, on this line—129.

Q. On this line, that is what I was asking you about.

A. You want the percentage now? Roughly, around 2%.

Q. Thank you, sir.

Now, you have offered the information; what percent of your total mileage is in North Carolina; I'm not confining it now to this particular route.

A. 1,294.

Q. That would be approximately—did I understand you to say it was approximately ten per cent of your trackage in North Carolina?

A. Ten per cent of the North Carolina trackage is the Greensboro-Goldsboro segment.

Q. Now, Mr. Gleason, you gave us a figure this morning, as to the total operating profit, I believe you call it, if I'm not mistaken, net operating profit of the Southern Railway Company for 1959, for the entire company. What was that for the year 1959; and on what Schedule does that appear?

A. For 1959, net income, I think that's what you are referring to?

Q. Yes, sir.

A. It is \$33,126,744.

[fol. 450] Q. What was the figure for 1958?

A. \$30,254,231.

Q. And now I will ask you for the figure of 1960.

A. \$30,702,542.

Q. And on what Schedule was that?

A. I don't think that's on any of my schedules; that appears in the annual report in Schedule 300.

Q. Now, your figure for 1960—

A. Oh, I'm sorry; this Income Account, it's the first time we have used this in proceedings, and I forgot about it, Mr. Bryant; it also appears on Schedule 31, 1959, on Sheet 1, and in 1960, Sheet 2 on Schedule 31.

Q. Thank you very much. Now, what do you term the net operating profit?

A. We, in the Railroad industry do not use profit. We have a term—

Q. Net operating income?

A. No, sir; not this figure. We do have—that's the figure which we predicate our rate of return relating to our investment figures.

Q. Now, what does the figure \$30,702,542 for 1960 represent in your terminology?

A. That represents after all our revenues, deducting all our expenses, taxes, then taking into consideration the joint facilities, equipment rents, adding other income, and de-[fol. 451] ducting deductions from income; and deducting your fixed charges; you get down to net income; that's the figure I gave you; and there is one more item of expenses to come out of that, which would be dividends.

Q. In order that I might understand your terminology, what do you identify that?

A. Net income, or profit.

Q. And, of course, as you have just explained, that is after the payment of all income taxes.

A. Yes, sir.

Q. Do you have the 1960 figure for your passenger losses, for the entire company?

A. Yes, sir, \$14,669,798.

Q. Is that after deducting income taxes, or before the deduction of income taxes?

A. There is no taxes on our passenger operations, as they are operated as a deficit; you pay no income taxes, but the taxes in there are three million seven, ad valorem use, miscellaneous, unemployment and so forth.

Q. But not income tax?

A. No, sir, you pay no income tax on that, because they operate as a deficit.

Q. All right, sir, now, by using any loss in your passenger income, you are able to reduce your Federal Income Taxes on that particular item by 52%, are you not?

[fol. 452] A. Yes, sir.

Q. And in North Carolina, you are able to reduce your losses by an additional six per cent, are you not?

A. Yes, sir; I'm not in the tax department, so, I am not familiar with the rates.

Q. If the maximum North Carolina corporate income tax is six per cent, then you would be entitled to an additional six per cent; would you not?

A. Six per cent there, yes, sir. Of course, that might not apply on the whole system. Various states have various levels of taxes.

Q. I understand, but that would apply to any losses inside of the State of North Carolina?

A. Yes.

Q. So as to any losses inside the State of North Carolina, you would have total deductions for income taxes of 58%, if the North Carolina rate is six per cent?

A. Yes, sir.

Q. So, therefore, that means that the net loss, with the elimination of the income taxes, would reduce the amount 42%, if you paid 58% in taxes.

A. That's correct. But we don't want to lose money to keep from paying North Carolina Federal Income Taxes. The Government wouldn't like that.

Q. I understand; now, of course, if Southern Railway [fol. 453] Company has to pay taxes too, just like anybody else we might just as well be realistic about that; because we have to pay them?

A. Yes, sir, we have to pay them.

Q. Will you turn, please, to your Exhibit Schedule No. 28, please, and I refer to Sheet No. 1. And I see there that by Direct Expenses in Excess of Revenues for 1960, for Operating Results of Passenger Trains 13 and 16 between Greensboro and Goldsboro, North Carolina; and I see for the total year 1960, the figure \$117,641.

A. Yes, sir.

Q. Will you please tell me what that figure represents?

A. That represents the out of pocket loss, on the operation of these trains for the year 1960.

Q. Is that before the deduction of any taxes?

A. No. That figure would naturally be diminished, if we didn't have that.

Q. Now, would you diminish that figure by 58% please and let me know what the results would be; I think you would get the same thing, by taking 42% of the figure, would you not?

A. You certainly would; and—

Q. And what would that amount to?

A. \$49,400, in round figures.

Q. \$49,400 in round figures, you say. Now, can you tell me what percentage of \$30,702,542, the sum of \$49,400 represents?

A. Not much.

[fol. 454] Q. Let's get it approximately, please, if you don't mind.

A. I don't mind, Mr. Bryant, making these computations, but it is difficult to sit up here and answer questions; I prefer to make most of these computations off the stand, if you wouldn't mind.

Q. I'm not hurrying you, Mr. Gleason.

A. You realize that it's difficult to sit up here and answer questions and make these computations; it's quite difficult; if you insist I do it, I'll do it.

Q. This may be an important figure, sir; I certainly wouldn't want to insist in taking up time if I didn't think so, but I did want to ask you what percentage of \$30,702,542 the figure \$49,400 represents.

A. .0016.

Q. Thank you very much, sir.

Now, going to another subject; what is the surplus, or what was the surplus of the Southern Railway Company at the end of the year 1960?

A. The ICC has changed the terminology of our Balance Sheet. We no longer have a surplus account; we retain—it's \$343,594,070.

Q. What dividends did the Southern Railway Company pay during the year 1960 to its shareholders?

A. \$21,043,207. That is your preferred and common both.

Q. The figure which you have given us for 1960 of \$30, [fol. 455] 702,542 represents net income from the 6,266 miles of trackage of Southern?

A. \$30,702,000 is the operation of Southern Railway Company; I'm pretty sure that's the mileage I gave you.

Q. That's the mileage, 6,266. Mr. Gleason, do you have any figures to show the net income, or net profit, from this—for 1960—from this route of 129 miles from Greensboro to Goldsboro?

A. No, sir.

Q. May I ask you this question. Are you not familiar with the fact that this 129 miles from Greensboro to Goldsboro runs through an extremely heavy industrial area?

A. It may well be; I'm not familiar with the industrial aspect of this section.

Q. Do you have someone who will be in a position to testify as to the possible revenue from freight in this, on this particular route?

A. No, sir, because we don't keep our records in such a manner that we can segregate a certain segment of operation and show the revenue.

Q. Without segregating it, statistically, don't you have someone in the company who knows whether or not this

particular route does run through a heavy industrialized area, which would be calculated to generate a great deal of shipments by way of freight?

A. No, sir, the only figure that I could give you; just [fol. 456] bear in mind now this is a branch line operation; and the only figures we would have to show the action on this particular segment is your density figures; your ton miles per mile of road; and ton miles per mile of road on this Greensboro-Goldsboro segment is about 61% of the company average. Now, the company average is decreased not only by this particular operation, but we have some more small operations where the traffic is not very dense. Now, relating this particular operation to your traffic coming down from Alexandria through Danville, Salisbury, and going on to Charlotte, and those places; that traffic there is terrifically dense compared to this. And it could be easily understood because it is not mainline traffic; this is feeder traffic.

Q. Wouldn't you say, then, that; strike that question, please.

Would you explain what you meant by the 61% figure a few moments ago?

A. Taking your net ton miles per mile of road, that's your traffic density; the traffic density moving on this line is approximately 61% of the company average.

Q. When you say this line, what line?

A. Greensboro to Goldsboro.

Q. Greensboro to Goldsboro.

A. I think that's easily understood because it's not on the main line operation.

Q. Then, Mr. Gleason, according to that, as I understand [fol. 457] it, you would say that the freight traffic moving on this Goldsboro-Greensboro route is above the average for the company's entire operation?

A. No, sir, 61% of the company average.

Q. Do you have any figures to show the freight operation on this particular route?

A. No, sir, only ton miles and miles of road, that's the only figures we have. You see, we can't confine our opera-

tions to any given segment like that without special study. Which would be quite involved; I've never heard of any special studies.

Q. Do you feel that you want to recess?

A. I'm getting tired; if a recess would be in order.

Exam. Gibbons: Let's proceed a short time.

By Mr. Bryant:

Q. Mr. Gleason, I refer to your suggestion that you don't like to work out percentages, but I would like to ask you if you lost \$14,669,798 in passenger service on your 6,266 miles, how much that averages a mile?

A. That figure was 6,267?

Q. You gave me the figure 6,266 miles of trackage of the Southern Railway; I'm assuming that is the figure.

A. I gave it to you, but I forgot it.

Q. I will be through in a moment, your Honor.

Exam. Gibbons: That question assumes that passenger operations are conducted over the entire track, isn't it?

[fol. 458] Mr. Bryant: I'm just trying to get an average, sir.

The Witness: \$2,344.

By Mr. Bryant:

Q. What does that figure represent?

A. That's your \$14,700,000 divided by your miles operated, 6,266.

Q. That would be the average passenger loss per mile of track, wouldn't it?

A. Just like the Examiner said, we are assuming that the 6,266 miles of road operated are both passenger and freight; we do have some exclusively freight operations, but, where there is no passenger service.

Q. Can you tell me the amount of passenger trackage?

A. No, sir.

Q. That figure was what please?

A. \$2,344, Now going to Schedule 531, miles operated is 2,913 for passengers, rather than your 6,266.

Q. Now, how much is the loss per mile, the 129 miles from Greensboro to Goldsboro, if the loss was \$117,641?

A. \$912, but now let me explain one thing first. You are taking this fourteen million; you are taking the full cost which includes everything; but when you are taking 117 thousand, that is cost, out of pocket cost, which is restricted to the sole operation of this train, so we are not comparing light with light.

Q. You have given the figure of 117 thousand as direct [fol. 459] expenses in excess of revenue, haven't you?

A. Yes, sir.

But when you get around to the fourteen million, you have everything in there; that's the full cost, as I explained when I was making explanation of Exhibit No. 3. That's the report we make to the Interstate Commerce Commission on our income table and report. That has full cost; \$117,641 is out of pocket costs related only to the operation of these trains, as I have shown on Exhibit 27; items of expense not included. There is a terrific amount of expenses.

Q. Let me get at it another way, Mr. Gleason; as to the point raised by the Commissioner a few moments ago, you have given us 6,266 miles as the total mileage of the Southern Railway Company; now is any of that not passenger miles?

A. A good bit of it, yes, sir.

Q. Can you tell us what part of it is exclusive; what part of it is passenger miles?

A. Schedule 531 shows 2,913.

Q. 2,913; so that if you were going to compare passenger miles with passenger miles, you would have to compare 2,913 for your entire company's operation with 129 for this Greensboro-Goldsboro operation, wouldn't you?

A. Comparing it with what, Mr. Bryant; the first computation you had me make was 6,266 miles.

Q. That's for the entire company, freight and passenger. [fol. 460] A. Yes, that's right.

Q. You tell me now that for the entire company's operations, that the passenger miles of trackage operated is 2,913, is that correct?

A. Yes, sir.

Q. I think that's all I want to ask you, sir.

Exam. Gibbons: Any further cross?
I have a couple of questions here.

Examination.

By Exam. Gibbons:

Q. This Exhibit No. 29, that figure \$41,517 for 1960; that, in effect, represents the Feeder Value of these trains, doesn't it?

A. Yes, sir, that the total of actual Feeder Value to the system lines, from this particular segment of \$83,034 reduced by the 50%.

Q. I understand you to say that the revenues, there the System Off Line Revenue is computed in the same manner as with the passengers revenue between the runs, between Greensboro and Goldsboro?

A. Yes, sir.

Q. Your out of pocket loss there is shown on Exhibit 28, and in the amount of \$117,641; is that the amount which you claim will be saved, if these two trains are removed?

A. Yes, sir.

Q. Wouldn't that, in turn, be reduced by the loss of the [fol. 461] feeder value, the revenue, or do you expect to lose all of the revenue that's shown on Exhibit 29?

A. No, sir, I'm not the man to answer the question; our Traffic Department estimates that we will save or retain part of this feeder value.

Q. A part of it?

A. From Greensboro to Mebane, I think; I think they will save.

Q. In other words, your claimed savings is \$117,641, is that right?

A. Yes, sir.

Q. On Exhibit H 6, you show all of these, you show the number of passengers?

A. Yes, sir.

Q. Does that include the Pullman passengers that might be riding between Raleigh and Greensboro?

A. Yes, sir, it includes the first class revenue. Mr. Examiner, if you will notice, in my expenses, I show the Pullman Company's net loss. In that loss, whatever first class revenue that the Southern Railway got for these people moving from Greensboro to Raleigh and return, those figures are included in the revenue of 102 at the top.

Q. Do Exhibit 29 there, the System Off Line Revenue, insofar as it relates to passengers, would only include first class and coach passengers?

A. Principally first class.

[fol. 462] Q. One question about the savings; I believe that you said that you saved all of the Union Station expenses at Goldsboro?

A. Yes, sir.

Q. \$6,940 a year; is it true that even if you do save that amount, those expenses would necessarily be diverted to other carriers that are using that station?

A. The carriers that remain there; they would have to bear the burden, unless they could reduce some of the expenses to the elimination of the Southern Railway's use of the terminal, yes, sir.

Q. Is that expense at Union Station, is that depending on the number of units; that operate in and out?

A. Yes, the cars in and out; these terminals make an operating statement and they show the cost of the operation of the terminal. Now, if there are any concessionaires, any revenue received, that in turn, is deducted from the expenses, and the net amount is pro-rated to the user lines on the basis of the cars they have.

Exam. Gibbons: Any further questions?

Mr. Dixon: I have one or two, Mr. Examiner.

Redirect examination.

By Mr. Dixon:

Q. Mr. Gleason, you stated the amount of dividends paid by Southern Railway Company in 1960.

A. Yes, sir.

Q. Were they based on \$2.80 a share on common, and [fol. 463] \$1.00 on the preferred?

A. Yes, that's correct.

Q. Can you tell us the earnings of Southern during the latest available period in 1961, compared with the comparable period in 1960?

A. The Southern Railway Company earnings for five months, ending May 31, 1961, as compared for the same period of 1960, revenues for this period were \$104,800,000; this is total revenues; against \$112,200,000 for the same period last year; a decrease of \$7,400,000. Our expenses, \$76,700,000 this year, against \$77,600,000; they also decreased \$900,000. Going down to Net Railway Operating Income, last year, this period, I mean, this year, \$11,500,000, against \$15,100,000 of last year, for a decrease of \$3,574,000; then carry it over to Net Income, this year, \$8,452,000, against \$11,042,000 of last year, or \$2,590,668 decrease of five months in 1961 as against the same period in 1960. Earnings per share of stock last year for the same period \$1.52, this year \$1.12.

Q. Mr. Gleason, on Exhibit 28, Schedule 1, Sheet 1, where you show a savings upon discontinuance of these trains of \$117,641, you were questioned about a tax deduction of either 52 or 58 per cent. With respect to that figure, and I would like to ask you whether taxes are computed on basis of out of pocket costs or fully distributed costs?

A. Fully distributed costs.

[fol. 464] Q. These figures are not fully distributed, are they?

A. These are out of pocket.

Mr. Dixon: That's all I have, Mr. Examiner.

Mr. Burns: I have a couple more questions in connection with some of the figures he brought out on questioning some other accounts. Do you want me to go ahead with them now?

Exam. Gibbons: Do you want to take a brief recess? I understand that this will conclude your cross?

Mr. Burns: It will finish mine.

Exam. Gibbons: Is there any further cross?

Mr. Bryant: I have no further.

Mr. Jones: I have no further.

Recross examination.

By Mr. Burns:

Q. Mr. Gleason, some of the questions; you mentioned a figure of 61% as being the traffic density of this line, compared with the company average traffic density; is that correct?

A. Yes, sir.

Q. And that is computed on a ton per mile of road basis?

A. Yes, sir.

Q. If we divide the miles of road of your company—I take it that's total miles that you are using there?

A. Yes, sir.

Q. Into the net freight operating income for your road in 1960, we will come up with a figure which is net freight [fol. 465] income per mile operated in 1960, wouldn't we?

A. That's correct.

Q. Now, the net freight operating income of your road, of your company in 1960 was \$50,777,397, was it not?

A. That is correct.

Q. And a mileage basis, dividing that by 6,266 miles, that would be \$8,086 net freight operating income per mile of road operated, would it not?

A. Yes.

Q. Now, if we take 61% of that, we have a good estimate of the freight earnings for this segment of the road, do we not?

A. No, sir.

Q. Why not, sir.

A. Because, as I say, let me get this straight; and how many miles are you using for this \$50,000,000?

Q. 6,266, which I believe is the figure which you used this morning.

A. You say \$8,103?

Q. I said \$8,086, but I accept your figure; whatever you say; what was it?

A. \$8,103. I could be wrong; it's not easy to make computations up here.

Q. All right, suppose we round it out to an even \$8,000; that would be slightly underestimated, would it not?

A. Okay.

[fol. 466] Q. If we say that is the average net freight income per mile of road operated, \$8,000 a mile, in 1960, and we take 61% of that figure, as being in line with your statement on freight traffic density on this segment of the road, we would have a good estimate, would we not, of the income, the net freight income for this particular segment of the road during 1960, would we not?

A. We would—\$4,880.

Q. Then we could determine the total amount by multiplying that back by 129.1, could we not?

A. \$629,520.

Q. So that would be the—what was that figure again, sir; \$620—

A. \$630,000.

Q. \$630,000, right?

A. Yes.

Q. As the net freight income for this segment of your road, during 1960.

A. I will concede that this segment of the railroad makes a contribution to the company, there is no doubt about that, freight wise.

Q. Makes a contribution, considering it as a unit of both freight and passenger service, does it not?

A. Well, it makes the contribution for passengers, but being as our passenger operations are at a terrific deficit, [fol. 467] it doesn't add any money through the company. But, as I say, the passenger ratio is 142 or 143, or \$1.44 to make a revenue dollar; so it makes a contribution of freight; none of our passenger operations makes—

Q. I understand that, sir; my point is this; as a unit consisting of both freight and passenger service, this segment of the road contributes to the overall welfare and profit of your company.

A. I don't think, Mr. Burns, I can agree with you with the passenger; I can agree with you on the freight.

Q. As freight and passenger lumped together?

A. We are losing \$14,700,000 passenger; it's certainly not adding anything to our net income from passengers; freight-wise, yes.

Q. As a unit, being made up of a whole series of transactions; some of them passengers, some of them passenger

transactions, some are freight transactions, as a unit, it contributes to the net income of your company?

A. I just can't agree with you, except for freight.

Q. You don't think that; well, strike that out.

I think it speaks for itself.

Mr. Burns: That's all the questions I have.

Mr. Dixon: That's all over here.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

[fol. 468] Exam. Gibbons: We will recess for five minutes.

(Short recess taken.)

Exam. Gibbons: Back on the record.

Mr. Bryant: If you please, at Mr. Dixon's consent; he has agreed that we might present two witnesses; neither of whom will be available to us after today, and I think we might have them both sworn at the same time, to save time.

Exam. Gibbons: Both of the witnesses who are to testify please stand and raise your right hand.

ERNEST RECHEL was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Will you kindly state your name for the record?

A. Ernest Rechel, R-e-c-h-e-l.

Q. Mind you, sir, that His Honor also, who sits behind you, must hear the witness.

Exam. Gibbons: I didn't get the spelling.

The Witness: R-e-c-h-e-l.

By Mr. Bryant:

Q. Mr. Rechel, where do you live?

A. In Huntingdon Valley, Pennsylvania.

Q. How far is that from Philadelphia?

A. The suburbs of Philadelphia.

Q. What is your occupation?

A. Chemist.

[fol. 469] Q. What type of chemistry are you engaged in, sir?

A. In charge of a research institute operation.

Q. Do you have any business in North Carolina?

A. Yes, sir.

Q. And what is the nature of your business in North Carolina, which requires you to come to North Carolina?

A. I come to Duke University approximately every three weeks, I should say.

Q. How long, sir, have you been coming to Duke University?

A. Oh, approximately ten years, I should say.

Q. Will you state how you formerly travelled when you came to Duke University? Which, I believe, is located in Durham?

A. Yes. I formerly came by plane, most of the time; sometimes I drove my car.

Q. Do you now come by any other method of transportation?

A. Yes, sir. I come by rail now.

Q. What train do you take in coming to Duke University for your consultations there?

A. We have only one train available to us in Philadelphia; it leaves about eight o'clock at night; it's overnight, and arrives in Durham in the morning; I don't know the number of the train.

Q. Do you travel in the Pullman car that leaves Philadelphia about eight o'clock at night, and comes straight on through to Durham?

A. Yes, sir.

[fol. 470] Q. Arriving at Durham approximately what time in the morning?

A. I believe it is about seven-thirty.

Q. How long have you been using the train as a means of getting from Philadelphia to Durham?

A. I should say about the past eight months.

Q. And how do you return from Durham to Philadelphia?

A. By train.

Q. And what train do you use in going to Philadelphia from Durham?

A. I use the overnight train that leaves about six o'clock.

Q. And what time does that return you to Philadelphia?

A. In the morning, approximately seven, or seven-thirty.

Q. Would you explain for the record please, sir, why you gave up plane travel from Philadelphia to Durham and return, in favor of train travel?

A. Yes, I will. I find that the train, overall, is a far more punctual mode of transportation. The plane service has deteriorated, from my standpoint, to such an extent that I find its punctuality has suffered thereby; and I find it extremely important and convenient to come in by train.

Q. Do you consider the retention of these two trains operating in and out of Durham as a case of necessity as far as you are concerned?

A. Yes, sir, I do.

Q. How often do you make this round trip from Durham [fol. 471] to Philadelphia on the Southern Railway trains?

A. About every three weeks.

Q. Mr. Rechel, will you explain what experiences, if any, you have had personally in attempting to make reservations by these trains to and from Durham?

A. My reservations are made for me by our travel agent, in our office. I understand that unless we attempt to make the reservations several days ahead, say, four or five days ahead of time, it is very difficult to get any confirmation on the return space. The going down is easy of course, but on one or two occasions, I was not sufficiently forehanded in getting these reservations, and I had to come with a blank ticket; I could not get any confirmation of the return.

Q. When your train gets into the Durham station at approximately seven-thirty in the morning; have you, on occasions when you did not have a return reservation confirmed, made an effort to confirm a return reservation?

A. Yes.

Q. And what did you find when you attempted to do so?

A. I was unable to get it at the last incident that I know of; last winter I had a blank ticket, and I was simply unable to contact the agent at the station. There was no answer to the telephone.

Q. When the train gets in at seven-thirty in the morning, do you know whether the ticket office is opened at that time?

[fol. 472] A. No, it's never been open at that time.

Q. Is there anyone at the station there, or have you made an effort at any time to find anyone at the station who could try to confirm the return reservation for you?

A. Yes, I've tried, but I have not been able to do so.

Q. Mr. Rechel, is there anything else which you care to state for the record in this case, as to the use of these trains?

A. Well, I can say, I find no particular reason to criticize the service; I've been very happy with it, and I find the privacy of the roomette accommodation is ideal; as I said before, it's far more satisfactory than air travel, for this particular journey, from Philadelphia to Durham.

Q. Yesterday, evidence was offered by the railroad company to indicate that there was bus travel available from Durham, and I ask you if you would comment, please, as to whether bus travel would be such as could be used for your purposes?

A. No, I think that would be out of the question. I have two choices; it's a difference of over; a distance of over four hundred miles. I might make a day trip and in that case, I would lose working time; or if I made an overnight trip, I'd arrive in a state that I would not want to present myself; you understand of course, sleeping in a bus seat overnight is undesirable.

Mr. Bryant: I think that's all I want to ask you, Mr. Rechel, thank you.

[fol. 473] Just a moment, please, there is possibly some cross examination.

Exam. Gibbons: Cross examination?

Mr. Eisenhart: I'm sorry, I didn't get your name; is it Mr. Rechel?

The Witness: Yes.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Rechel, how long did you come to Durham by airplane?

A. You mean over how many years?

Q. What period of time?

A. From about 1951 until about eight months ago, say October of last year.

Q. What airline did you use for that flight?

A. In the early days, we had two airlines, we had Capital and Eastern; and Capital dropped out of the picture of course, and Eastern has a complete monopoly on the Philadelphia-Durham run.

Q. United didn't pick up Capital's run?

A. No.

Q. And that time that you used the air service, did it ever take you as long as 11 or 12 hours to get between Philadelphia and Durham?

A. Yes. Recently, I'd say in the last two years, I felt the decline in service. In the earlier part of my experience, [fol. 474] in the year 1951 on, we used to have remarkably convenient flights, direct flights, from Philadelphia to Durham, as a matter of fact; somewhere short of three hours. Of course, they were ideal. However, we don't have that, and I've had the experience of waiting at Durham Airport at least five hours before the plane even departed there.

Q. When did you wait the five hours before the plane departed; do you remember when that was?

A. It was one occasion last summer; I think this is what really convinced me that I didn't want to go through it again; the plane was due from Atlanta, and we were kept on a thirty minute alert at the airport, and not told that the plane had had to have a new engine put in it, and I think any of you gentlemen who fly will have had this experience. In addition to that, may I add that there is regularly, I think, unreasonably long connection time in Washington Airport.

Q. You mean you have to get off the plane and wait over?

A. Yes, there is only one flight that is direct, I understand, and that's 11:00 o'clock in the morning, flight that goes into Philadelphia.

Q. Is that northbound?

A. Northbound, yes.

Q. You had one instance where you waited as much as five hours; do you remember how long it took you after you were in the plane to get to Philadelphia?

[fol. 475] A. No, I don't, but I feel sure that it must have been at least one or two hours delay in Washington, because I missed the connection I had the ticket for. And there, of course, is some doubt as to whether you will continue. On quite a few occasions, I would say, I got to Washington, and found it more expedient to go to Union Station and take a train back from that point.

Q. Certainly that didn't occur during the afternoon rush hour in Washington; getting between National Airport and Union Station.

Mr. Rechel, when you come to Durham, do you know how long you are going to be here?

A. Yes, I always know exactly.

Q. So you could make your return reservation in Philadelphia before you set out?

A. Yes, it's always my plan.

Q. Do you know with whom your travel man makes the reservation in Philadelphia; is that with the Pennsylvania Railroad?

A. The Pennsylvania Railroad.

Q. And your trouble in making reservations is that you have to make them within the last day or so before departure?

A. Yes.

Q. In other words, you make the reservations satisfactory?

A. Yes.

Q. Have you had any difficulty on the train as to the [fol. 476] cooling of the car, the temperature of the car?

A. I don't recall any difficulty of that sort.

Mr. Eisenhart: Thank you, Mr. Rechel; that's all.

Redirect examination.

By Mr. Bryant:

Q. Do you have any dining facilities on the car, returning to Philadelphia?

A. At Greensboro, we do, yes.

Q. All right, sir, that's all.

Thank you very much.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

JUSTIN KINGSON was duly sworn and testified as follows:

Direct examination.

By Mr. Graham:

Q. Would you state your name for the record, please?

A. My name is Justin Kingson, K-i-n-g-s-o-n.

Q. Your address?

A. 1050 Park Avenue, New York City.

Q. What is your occupation, Mr. Kingson?

A. Textile Executive.

Q. Mr. Kingson, would you state, please, your interest in and your connection with the Durham community?

A. Yes, I am the sole owner and stockholder, and officer of the Kingson Mills. We are now building and locating our plant in Durham. We are building it.

[fol. 477] Q. When did you first form your connection in Durham, Mr. Kingson?

A. About a year and nine months ago.

Q. Were you in touch with various leaders in the Durham community, representatives of groups, prior to your coming?

A. No. Yes—more so through the C & D Department in Raleigh; Conservation and Development.

Q. Of the State Government.

A. They pointed out various cities and various good points and bad points in locating the plant.

Q. Did you look at more places of possible location in North Carolina than Durham alone?

A. Oh, yes, all around.

Q. You looked at a great many?

A. Yes, sir.

Q. What were some of the factors that you took into account in determining to locate your plant in Durham?

A. First the building was quite suitable for us, the one we are working on now; the people were nice; the labor supply was fine; the tax picture was fair; the water supply was good; necessary for a finishing company. What particularly attracted me was this train service.

Q. That was a method of transportation to you. Do you operate any plants anywhere else?

A. In Rhode Island, sir.

[fol. 478] Q. Rhode Island?

A. Yes, sir.

Q. You make your permanent residence in New York City?

A. Yes, sir.

Q. Is it necessary in the course of your business to make frequent trips to the various plants?

A. I do, sir.

Q. Would you estimate the number of times you come to Durham per month, sir?

A. Well, it's still being built now; we are just beginning operations now; I've been averaging one every two weeks; occasionally, one every three weeks, and sometimes I come every week. But, as we get that running there, and we look forward to employing two or three hundred people eventually; I will have to come more often.

Q. Mr. Kingson, when you do visit your interest in Durham, what method of travel do you employ?

A. Train only.

Q. And that would be the train coming right through Durham from Greensboro?

A. Yes, sir, and I go back the same way.

Q. You would take Train 16?

A. Yes, sir. I don't know the numbers.

Q. You know it's Southern Railroad?

A. That's right.

[fol. 479] Q. You catch the train going back to your home right there at Union Station in Durham?

A. Yes, about 5:55 at night.

Q. On your return to Durham, do you come into the same station?

A. Yes, sir.

Q. Is that in the morning hours?

A. Yes.

Q. Mr. Kingson, why is it you are so weighted to the use of that train as to some alternative method of travel?

A. Frankly, many years ago, I had an automobile accident, and I can't fly; and I must use the train; and that's one of the prime reasons I located this plant here; I wasn't asked to come here today even though you do happen to be our attorney; I just happen to hear that that was the hearing, and I asked you to let me come, because if this train is taken off, I'm going to be in a devil of a fix.

Q. Do other members of your family use it also?

A. Yes, sir, my son does, who works with us.

Q. And Mrs. Kingson, I believe?

A. When she comes down; and I will tell you another thing; it rounds out a picture for the rest of our executives. It's true they fly, but they also take the train, and we never have to worry. They have two methods of coming; sometimes they come by train, and sometimes by plane; but it sort of rounded out the picture of Durham for me, [fol. 480] having both services.

Q. Would it be fair to say that that was a major contributing factor as to your final decision as to locating there?

A. I would say major, but my personal case, owning all the stock, I could make the decision to suit myself.

Q. Was it the final decision?

A. It was a good part of it.

Q. Would it be fair to say that the rail service offered by Seaboard to Raleigh, which you may have heard mentioned in the discussion here; would it be fair to say that that would not adequately replace the Southern's service?

A. No, not at all except in emergencies. Because, I had the thing last night; the situation faced me last night. I

was down in Washington with the Commerce Department, and it was about 5:30 when I got through there, or 4:30 Standard time; I missed the train to Raleigh, and I had my choice of making the 8:30 or something, that would have landed me in Raleigh at 12:20 or 1:00 o'clock, sometime around that, and I didn't have a car to Durham, but then I was able to catch that midnight train at 11:00 o'clock standard, to Durham, from Washington, and that way, I didn't lose any time. Normally, in New York, if I want to go by way of Raleigh, I would have to lose an entire day; I would have to start during the day.

Q. If I understand you correctly, your particular case, bus travel would be entirely inadequate and impossible?

[fol. 481] A. Yes, sir.

Q. And air travel likewise?

A. Yes, sir.

Q. In your opinion, does the continuance of this train serve your personal convenience and necessity?

A. Absolutely.

Q. And those of your family and organization?

A. Absolutely.

Q. In your opinion, could this service be improved; the facilities which are offered?

A. My problem of reservation is different from the other gentleman; maybe I am more daring. I just come here and take my chances; I have never been shut out; I have always gotten reservations back; and in New York, I make them in New York, and somehow there is always something, if you are patient enough. The reservation part is okay; but the part that does sometimes annoy me; it's almost like a rule that you never know what car you are going to get; now, take this morning, I came down—you people can check—it was Car SR 34, Bedroom F, and the air conditioning was on all night; it was the type of air conditioning that was centrally located, different from the ones that work individually; but Mr. Sledge and Mr. Crawley were on that same train with me, and it was freezing this morning, and they couldn't turn that off. About a half hour before we got to Durham, I tried to get off, and I found the door was [fol. 482] locked; the lock switched; and there I was about

a half hour, and everybody trying to get me out of there; I was locked until somebody thought of the idea of taking me from the next bedroom; but things like that you find all the time; sometimes it is a new car, sometimes it's an old car. But it is never a steady car.

Q. In spite of the imperfections of the service, it still has a value to you which no other method of transportation can match?

A. Those imperfections are only slight; the help is always courteous and everything else is perfect.

Q. When you; I believe you are planning to return to Washington and New York, in the near future; which method of travel do you plan to employ?

A. I have no other way, sir, train.

Q. Leave Durham on the very train we are talking about?

A. That's right.

Mr. Graham: You may examine him, sir.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Kingson.

A. Yes, sir.

Q. When was it that you consulted the Conservation and Development people and other local people about locating your plant in this area?

A. This has been going on with Governor Hodges a long time; over the years, we look at one place; there are good things with it and bad things with it; but this has been going on four or five years.

[fol. 483] Q. You made your decision to locate in Durham about what time?

A. Sandy, do you remember; was it in August?

Mr. Graham: I'm not on the stand.

The Witness: I'm sorry; I thought this was informal; I apologize; maybe a little less than two years ago.

By Mr. Eisenhart:

Q. Between a year and two years?

A. About a year and nine months, to two years.

Q. About that time, were you told by any of these people that an effort was being made to remove these passenger trains?

A. No, they wouldn't tell me that; of course, that was one of the reasons we came here.

Q. Do you know, or were you told at one time that Durham had more passenger service than is now available?

A. No, sir.

Q. Did you consult with the Railway Industrial Development people concerning the location of your plant?

A. No, sir.

Q. Is this plant that you are constructing a plant that would ship by rail or by motor carrier, or some other way?

A. They will ship both ways; it's got a railroad siding, sir.

Mr. Eisenhart: That's all I have, thank you.

Exam. Gibbons: One thing, if these trains were discontinued, have you thought of any way of travelling back and forth between New York City and Durham?

[fol. 484] A. I never realized until the; just the past few months, that there was even a question of that; I don't know how I would get down, except lose an extra day each way; that's what I would have to do.

Exam. Gibbons: By what means?

The Witness: I would have to go to Raleigh and leave in the afternoon; and here is another problem; there isn't any train back from Raleigh; the first one is about ten o'clock at night; I'm only guessing these names; now, the Seaboard, and one coming up from Florida at one; now they get in New York past eleven or twelve o'clock the next morning; where this one gets in early in the morning.

Exam. Gibbons: Then you would have the problem of going from Durham to Raleigh.

The Witness: I would either have to have someone meet me or take a cab; probably a taxi cab.

Exam. Gibbons: You could negotiate the trip by rail, but you would be inconvenienced by several hours?

The Witness: It would be more than that; several days. If I want to leave New York Monday night at 6:30, I think, 7:30, I would be in Durham tomorrow morning, Tuesday morning. On the other hand, if I had to come by way of Raleigh,—I don't know the exact schedule, but during the day; then I would have to take a taxi or get some means of motivation over there, and I would have to leave late at night the next day and take a chance of that Florida train [fol. 485] being late; in the winter time, it is awful late; and I know that I can't get into New York before eleven or twelve the next day; so it isn't just one day; it is two or three days.

Exam. Gibbons: You are excused.

Mr. Eisenhart: May I ask a question, sir?

Are you familiar with the bus service between Greensboro and Durham, Mr. Kingson?

The Witness: No.

Mr. Eisenhart: In the event that there was available bus service between Greensboro and Durham, you could continue to take the same train that you do from, say, between Greensboro and New York, and come to Durham either by bus service, or by taxi, or by rented car, or being met?

The Witness: I could do that; I could take the bus direct from New York; or I could drive down.

Mr. Eisenhart: You suggested that that would cost you a good deal of time, I believe.

The Witness: What time would you get into Greensboro; what time would I have to get off to get here at nine o'clock in the morning? I would have to get off about six. And I think it would be quite difficult, putting in a day's work riding at night. I don't know how far Greensboro is from Durham.

Mr. Eisenhart: Thank you.

Exam. Gibbons: You are excused.

(Witness excused.)

[fol. 486] Exam. Gibbons: Mr. Bryant, do you have any more witnesses at this time? Are they the only two you wish to put on at this time?

Mr. Bryant: The rest of them, if your Honor please, can be available later. Thank you very much for permitting me to put these two on out of order.

Exam. Gibbons: All right, sir.

Mr. Dixon: Mr. Kidd.

J. W. Kidd was duly sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. Mr. Kidd, please state your name, residence, and occupation.

A. J. W. Kidd; residence, Charlotte, North Carolina; Assistant Chief Engineer of lines leased.

Q. What is your railroad background, Mr. Kidd?

A. I have 37 years with Southern Railway.

Q. As an Engineer?

A. Not all of it as an Engineer, but the first 12 or 13 years as an Engineer, Assistant Bridge and Building Supervisor, for a couple years—eleven years. Assistant Division Engineer for a couple years; Division Engineer for two or three; Assistant Superintendent for about a year; and since that time, Assistant Engineer of lines leased.

Q. Mr. Kidd, I believe you have prepared an exhibit [fol. 487] designed to show Estimated Benefits to be Derived by Removal of Passenger Service on the Southern Line between Greensboro and Goldsboro, N. C.?

A. Yes, sir.

Q. Mr. Examiner, may we identify this exhibit as H 11?

Exam. Gibbons: It may be so marked for identification.

(Exhibit H 11, Witness Kidd, was marked for identification.)

By Mr. Dixon:

Q. Will you tell us, Mr. Kidd, what H 11 shows, please?

A. We have on there, beginning at the Greensboro end of the line, a station at Gibsonville, Elon College, Burlington, Graham, Haw River, Mebane, Hillsboro, Durham,

Morrisville, Cary, Raleigh, Garner, Clayton, Selma, Pine Level, Princeton, and Goldsboro.

Q. Are those all the stations on the line except Greensboro?

A. Yes, sir.

Q. Just go ahead.

A. In the first column, we've got an annual saving in maintenance, at Gibsonville, of about \$95 a year, and \$5 annually for heating and utilities. Elon College, which I understand is now, been granted authority for the removal of that station; we have an annual saving of \$120 in maintenance and \$10 for utilities. In Burlington, \$725 for annual maintenance figures, and \$2,250 rental on lease property, and \$2,250 on leased property anticipates that [fol. 488] the station will be removed. Annual savings on heating and utilities, \$500. The next is Graham, Haw River, Mebane; we do not feel that we can save anything on these three stations at all, because they are only suitable for our needs now, and will not be affected savings-wise if the train is removed. Hillsboro has an annual saving estimated at \$51, \$4 for heating and utilities. Durham an annual saving of \$2,090 and heating and utilities of \$1,425. Morrisville and Cary, we have no savings at all. Raleigh, estimated annual savings on maintenance, \$855, and due to certain changes that we probably will make when the train comes off, that is leasing out the freight station and its property around it, certain property around it, and converting the passenger station into a freight station, we figure that we can rent that property for \$4,570 annually; there will also be a saving in heat and utilities and other items of \$2,200. Garner, we have no savings that we can figure there. Clayton, we only have a small saving there of about \$40. Selma, Pine Level, fall in the same class; Princeton, we have a small saving there of about \$70 in maintenance, and about \$5 in utilities; making a total there on annual savings and maintenance of \$4,046; annual rental for lease of property of \$6,820; and heating and utilities of about \$4,149. We have a note down on the bottom there, which is for jointly owned facilities, which include Durham, which we claim the entire operating cost; Cary, which is on a 50-50 basis; I believe; and Selma, with

[fol. 489] the Coast Line, which is on a 50-50 basis. Goldsboro, I believe that is on a one-third basis. We claimed no savings at all.

Now, we also figure there that it will cost us about \$38,000 to; \$38,800, to convert that passenger station to a freight station. We estimate that the total annual benefits in the Summary down there to be about \$15,015.

Q. Mr. Kidd, that sum of \$15,015 is in addition to the figures that were introduced by Mr. Gleason?

A. Yes, sir.

Mr. Dixon: That's all I have on direct, I believe.

Exam. Gibbons: Cross examination?

Mr. Burns: Just a few questions.

Cross examination.

By Mr. Burns:

Q. Mr. Kidd, I think, if I understood you correctly, the \$2,250 that Burlington is showing, is contingent on the removal of the station?

A. That's right, sir.

Q. And I also think you said that the savings at Elon College has already been brought about by closing out that station, regardless of what happens in this proceeding?

A. That's my understanding, yes, sir.

Q. I think you are correct, sir, I just wanted to clarify that. Now, as far as Raleigh is concerned, do you think you can rent the local Southern Railway Passenger Station for \$4,570, if you spend \$38,800 getting the station ready [fol. 49C] for use as a freight station?

A. We would rent the front station, and move our freight operation facilities into the passenger station, by spending \$38,800; to the passenger station.

Q. Why is the savings in heating and utilities so much higher at Raleigh than it is in Durham?

A. For this reason; we have a combination plant at Raleigh, which is yard heating and depot heating, which runs that cost way up.

Q. Any labor in any of these figures that you show here?

A. The only labor that would be involved would be the labor as far as the annual savings in maintenance would be concerned; there might be some labor in that.

Q. Would that be janitorial service?

A. No, sir.

Q. Porters?

A. No, sir; no operating personnel at all.

Q. Durham, in your maintenance cost, who does the maintenance work there, what employees?

A. Well, of course, there are several different classes of employees that do that maintenance work; there are primarily the Bridge and Building forces that do the work; and of course, there are some railway forces called in from time to time to do minor jobs such as cleaning the snow and ice, if that should occur.

[fol. 491] Q. Does that occur very often?

A. No, sir, I don't think it occurs too often at Durham.

Q. Did you spend \$22,090 in Durham last year?

A. \$22,000.

Q. No; \$2,000.

A. This is an estimated figure for the future.

Q. Are all these figures estimated?

A. Yes, sir.

Mr. Burns: That's all the questions I have.

Exam. Gibbons: Any further cross?

By Mr. Jones:

Q. Mr. Kidd, I would like to ask you a few questions. In your last answer to Mr. Burns, on the item of \$2,090 annual savings in maintenance at Durham:

A. Yes, sir.

Q. You say you didn't actually spend that?

A. I don't know what was spent. I haven't gone into the maintenance figures for the last five or six years at all.

Q. Oh, yes, I see.

A. This is estimated, sir.

Q. You have made the estimates?

A. I have made the estimate.

Q. But you don't know what they spent in the last several years?

A. I have not gone into it.

Q. I notice, Mr. Kidd, that the title of this Exhibit H 11 is Estimated Benefits to be Derived by Removal of Passenger Service between Greensboro, N. C. and Goldsboro, [fol. 492] N. C., but I fail to find any designation as to who those benefits inure to.

A. What do you mean by that?

Q. I mean to ask you to whom will these benefits inure that you say will be realized; if this passenger train is discontinued?

A. I would say the Southern Railway Company.

Q. Now, I believe you stated by cutting out the passenger service between these two points, that you could save \$15,015. Do you know how much money the Southern Railway Company has spent in the last 12 months on advertising its facilities, passenger facilities, soliciting people to ride a passenger train?

A. Well, sir, my only answer—I'm not in the traffic department; or passenger department; I don't know anything about that.

Q. You don't know?

A. No.

Q. You don't know how much advertising or solicitation \$15,015 would buy, do you?

A. I have no idea.

Q. And this \$15,015, which you estimated can be saved, which you estimated will benefit the Southern Railway Company by removing these trains; if that \$15,000 were spent on trying to improve facilities and trying to solicit people to ride on the trains, do you know how far and to what extent that would go?

A. No, sir, I would have no idea.

[fol. 493] Q. So far as you know, there has been no move afoot to spend \$15,000 for that purpose, has there?

A. I know nothing about it; as far as I know.

Q. Now, if the \$15,000 is saved by removing the passenger trains, of course, there will be no service at all, no passenger service between those two points, and that \$15,000 so saved could be added to the earnings of the company of thirty odd million dollars, could it not?

A. I don't know where the \$15,000 will go, sir, that's not in my province; I don't know anything about that.

Q. It would be distributed to the stockholders of Southern Railway?

A. I don't know that.

Mr. Jones: I don't reckon there is anything else, other than—this other thing—did you prepare this exhibit, H 11?

The Witness: Yes, sir.

By Mr. Jones:

Q. Of course, you found out about the hearing, I imagine?

A. Yes, sir.

Q. Who is your immediate supervisor?

A. My immediate supervisor is the Chief Engineer of Lines, J. M. Peak.

Q. Is he the man who gave you instructions to be here?

A. Yes, sir.

Q. And to prepare this exhibit?

[fol. 494] A. Yes.

Mr. Jones: That's all I wanted to ask.

Exam. Gibbons: Any further questions?

By Mr. Graham:

Q. Mr. Kidd, I understood you to say in answer to questions from Mr. Burns, I believe, that in arriving at the figure of \$2,090, beside the Durham Station, in the first column, Annual Saving in Maintenance, that you did not look at any of the actual costs for the past few years?

A. No, I was not interested in any of the actual costs over the past few years, for the simple reason I was interested in future maintenance.

Q. Is that same statement true with respect to the figures that you have beside Gibsonville and Elon College and others in that column?

A. Yes, sir.

Q. Is it also; if I understood you correctly, also the figure of \$4,570, which appears in the column Annual Rental for lease of Property beside the Raleigh Station, is a figure which you estimate that you might be able to rent some property for?

A. Yes, sir.

Q. In other words, if it is not an actual figure, it is just a figure that you estimate that you might be able to rent something.

A. I had a basis for that estimate. I have a basis.

Q. But it is not an actual figure, it is an estimate?
[fol. 495] A. It is an estimate.

Mr. Graham: Thank you, sir.

Exam. Gibbons: Further cross?

(No response.)

Exam. Gibbons: If not, the witness may be excused.

(Witness excused.)

Mr. Eisenhart: We will call Mr. Bayliss, please.

GEORGE V. BAYLISS was duly sworn and testified as follows:

Direct examination.

By Mr. Eisenhart:

Q. Mr. Bayliss, will you give your name and address and occupation?

A. My name is George V. Bayliss; my home is in Arlington, Virginia. I am Special Investigator, Audit Department, Southern Railway Company, Washington, D. C.

Q. What do your duties consist of as far as they relate to proceedings of this kind?

A. I make field investigations and studies with respect to population, motor vehicle registration, and competitive services, available highways, and other data, and in connection with train discontinuance cases. I have testified before most of the State Regulatory Commissions in which the Southern Railway Lines operate.

Q. Did you participate in this case before the North Carolina Utilities Commission?

A. I did.

[fol. 496] Q. Have you prepared testimony and Exhibits

for presentation in this proceeding before the Interstate Commerce Commission?

A. I have.

Q. Is the testimony, and the exhibits, which you are about to give, true and correct to the best of your knowledge and belief?

A. They are.

Q. Now, Mr. Bayliss, would you indicate what part of the textural material in the application filed before the ICC is your material?

A. Yes; beginning at the top of page two, the sentence, "This exhibit also shows—", down to the end of that paragraph, "the year 1960." Picking up at page 3, the bottom of the page, "The trains provide rail passenger service"; page 5, beginning with, "Exhibit 4 attached—"; page 9, ending with "by Exhibit 5.", and picking up at the top of page 10, paragraph 5, and ending on page 25, the top of the page, the paragraph ending with the word "miles."

Q. Ending "RF&P is 275.4 miles."?

A. That's right.

Q. Does that cover the text of your material?

A. That covers the textural material.

Q. Now, Mr. Bayliss, did you participate in the making of Exhibit No. 1, attached to the application?

A. Yes, I am responsible for the population figures inserted there.

[fol. 497] Q. The source there is shown at the bottom?

A. That is correct.

Q. What other exhibits?

A. Well, the map marked Exhibit 2, I'm responsible for the supervising and making of that map.

Q. That's an official highway map of North Carolina?

A. That is a blown-up section of the North Carolina Highway Map for the year 1960.

Q. Has a red line on it.

A. That's right; I inserted the red line.

Q. Which is what?

A. Indicating the line, the route of trains, Trains 13 and 16, between Goldsboro and Goldsboro, or Greensboro. And Exhibit 4?

Q. Yes.

A. In this connection, I would like to make a correction here; under the column 1960, showing the total population of the seven southern counties, I have 801,236; and I find that that should be 802,236.

Q. I take it that's an error in arithmetic, since you are not changing any of the other figures on that page?

A. There is a slight change on the average population of the seven counties; now reading 200.4, should be 200.6. For Percent Increase of seven Counties, now reading 20.5, should be 20.6. Exhibit 5, the same error in connection with [fol. 498] the total population of the seven counties, should be changed from 801,236 to 802,236, and there won't result in any other changes on that page.

Next, I have Exhibit 6—

Q. That is self-evident. And Exhibit 7?

A. Exhibit 7, a map.

Q. Will you describe what that map is?

A. This map shows the lines of Southern Railway in Green, the route of Trains 13 and 16, between Greensboro and Goldsboro, in Red; the Seaboard Airline Passenger Service through Raleigh, is in Blue; at Selma, the yellow line running through there is the Atlantic Coast Line service; between Richmond and Florida points; at Goldsboro, another yellow line running down from Wilson, North Carolina, shows the Coast Line passenger service from Rocky Mount to Wilmington through Goldsboro.

Q. Now, Mr. Bayliss, Exhibit No. 8 is a two-page exhibit?

A. Yes, sir.

Q. And I believe you have among this group, which are stapled together, what you call a revised exhibit 8, is that correct?

A. Yes, sir.

Q. What do you mean by revised; what is the difference between the revised Exhibit 8, which I will ask the Examiner to give a number to—

Exam. Gibbons: We will assign that as Exhibit H 12. That is the—

Mr. Eisenhart: The Timetable of Other Southern Rail-
[fol. 499] way Company Passenger Trains Serving Greens-
boro, North Carolina; a two-page exhibit.

The Witness: Original No. 8 is revised for the reason, Mr. Examiner, to reflect certain time changes which came about from changing some times, from Standard to Day-light Saving time.

Exam. Gibbons: You said a two-page exhibit; is that right?

Mr. Eisenhart: Off the record, just a moment.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: On the record.

Mr. Eisenhart: Can we have it shown then, that the exhibit designated H 12 is of several pages to revise schedules shown in Exhibits 8, 9, 10, 11, 12, 13, 14, 16, 17, and 18, which are attached to the application.

Exam. Gibbons: In other words, H 12 revises all of those that you just mentioned?

Mr. Eisenhart: Yes, brings them up to date.

Exam. Gibbons: All right.

(Applicant's Exhibit H-12, witness Bayliss, was marked for identification.)

By Mr. Eisenhart:

Q. Now, Mr. Bayliss, do you have before you a two-page document entitled North Carolina counties that does not have rail passenger service?

A. Yes, sir.

Q. May we have that marked separately, Mr. Examiner?

[fol. 500] Exam. Gibbons: As Exhibit H-13.

(Applicant's Exhibit H 13, Witness Bayliss, was marked for identification.)

By Mr. Eisenhart:

Q. Will you explain that exhibit, Mr. Bayliss?

A. Exhibit 13, H 13, shows that of a total of 100 counties in North Carolina, there are today exactly one half, fifty counties, that do not have rail passenger service.

These fifty counties embrace a total land area of 23,364 square miles, or approximately 47.5 per cent of the total

land area of the state. Population-wise, the population of these 50 counties total 1,315,235, or 28.8 per cent of the total population of the state.

Q. Now, Mr. Bayliss, will you turn to a one page document entitled Southern Coach Company, a timetable, which I ask to be marked.

Exam. Gibbons: That will be marked as Exhibit H 14.

(Applicant's Exhibit H 14, witness Bayliss, was marked for identification.)

By Mr. Eisenhart:

Q. Please indicate what the purpose of that is?

A. H 14 shows the schedule of Southern Coach Company, a line having service between Raleigh and Wilmington; but for the purpose of this case, that Table 3046 shows two round trips daily between Durham and Raleigh.

[fol. 501] Q. Is this additional to service shown in the exhibits attached to the application?

A. That is correct.

Q. Now, Mr. Bayliss, have you made any study of the situation of counties which would no longer have rail passenger service in the event these trains are discontinued, insofar as the number, insofar as the effect on the use that is being made of the trains is concerned?

A. Yes, sir.

Q. Would you please discuss that?

A. In connection with Mr. Gleason's Exhibit 4—

Q. 24?

A. Exhibit 4, that's the On and Off—

Exam. Gibbons: H 4, it is.

The Witness: H 4 is the On and Off statement. I want the prior one for '59 and '60, attached to the petition.

By Mr. Eisenhart:

Q. That's Exhibit No. 24.

A. From Exhibit 24 of Mr. Gleason, I determined the number of passengers boarding the trains in both 13 and 16, in Alamance County, Orange County, and Durham

County. The three counties involved; and those three counties, there are a total of nine stations. In Alamance County, having five stations, Elon College, Burlington, Graham, Haw River, Mebane, and in 1959, those five stations had a total of 1,531 passengers boarding both trains 13 and 16. Now, the total population in Alamance County of 85,674, [fol. 502] the ratio of use of the trains to population in that county is 1.79%, less than 2%; in 1960, same county, same stations, a total of 1,810 fares or persons using the trains, both Trains 13 and 16, the use in ratio to population is 2.11%; in Orange County, 1960, the population 42,970 persons, three stations, Efland, Hillsboro, and Glenn; in 1959, those three stations had 216 persons boarding Trains 13 and 16, with a ratio of use of population of .50%, one half of one per cent. In 1960, those three stations reduced 207 fares, and a ratio of use to population of .48%, less than one half of one per cent. Durham County, 1960 population of 111,995 persons; one station, Durham. 1959, 3,132 boarded 13 and 16 and a ratio of use to population of 2.80%. In 1960, Durham has 3,704 persons boarding trains 13 and 16, a ratio of use to population of 3.31%.

Q. I figure from what you say that you used the On passengers at these stations?

A. Persons boarding the trains; he is the fellow that produces the revenue; they pay when they get on, they don't pay when they get off.

Q. At this place?

A. At all the places.

May I finish; I hadn't finished.

Q. Yes.

A. Now, the total population of the three counties, 240,639; total passengers in the three counties, boarding Trains [fol. 503] 13 and 16, 4,879, and that's a 1959 figure; now that's a ratio of use to population for a total of three counties, 2.0%; in 1960, a total passengers boarding trains 13 and 16 in the three counties, 5,721, a ratio of use to population, 2.3%.

Q. Now, have you made the same kind of study for counties that will continue to have some rail passenger service, in the event that these two trains of Southern Railway are discontinued?

A. I have.

Q. Would you briefly indicate that; I think we can get the totals and percentages.

A. The four counties that will continue to have rail passenger service in the event 13 and 16 are discontinued; Guilford County, Wake County, Johnston County and Wayne County.

May I go off the record a moment?

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: On the record.

The Witness: The total population of the four counties, 561,597; total passengers, 9,382, in 1959; a ratio of use to population of 1.67%. In 1960, a total of passengers boarding 13 and 16, 9,044; a ratio of use to population of 1.79%.

Mr. Eisenhart: That's all I have on direct.

Exam. Gibbons: Cross examination?

Cross examination.

By Mr. Burns:

Q. All right, sir, first of all, on your Exhibits H 14, isn't [fol. 504] it a fact that Schedule 3046, Southern Coach Company suspended by the Utilities Commission?

A. I'm not aware of that. If so, it was shown in Russell's Guide of June, 1961; it may have occurred since that was published.

Q. Are you the man for Southern Railway who is charged for publishing your own schedules?

A. No, sir.

Q. Who is the man which should be asked about publishing the schedules?

A. Mr. Deck is here from the passenger department; I don't know if he has anything to do with the publishing.

Q. It is a fact that you have already published in some National publication the fact that this train has already been discontinued?

A. I know nothing about that. What national publication; the Official Guide of Railways?

Q. Yes. Has it been published that the Pullman car be discontinued on the day this hearing was to start?

A. I haven't seen the latest guide, but I don't believe that's so.

Q. We can establish that.

A. I hope so.

Q. And otherwise, there are errors that appear in—

A. Not that serious.

[fol. 505] Q. I'll ask you if it hasn't been corrected by subsequent—

A. It has appeared in the publication; I said I don't believe it appeared in the publication, even though I haven't seen the latest official guide.

Q. The latest one will be correct.

Are you familiar with North Carolina and the location of the counties that you have on your Exhibit H 13?

A. By examining a map of North Carolina.

Q. You don't know where these are of your own knowledge?

A. Which ones do you want to locate?

Q. Where is Cherokee, is it in the Piedmont, the mountains, or on the coast; can you tell me where these counties are without looking on your map?

A. I can tell you they are in North Carolina.

Q. Have you studied them to see if they form sort of a picture on the map, as being extreme coastal counties, or extreme mountainous counties?

A. I can tell you they are divided around in western North Carolina, they are in the eastern section of North Carolina; they are in the northeastern section of North Carolina; that are in the southeastern section of North Carolina; they are all over the state.

Q. Basically, these counties are mountain counties and coastal counties, is that not correct?

A. Some in the mountain section, some on the coastal section, [fol. 506] and some in the southern section over here.

Q. We can go into them county by county, and let you find them on your map, and we can designate them as mountain and coastal. What I'm trying to do is save time, and to get you to admit that these are primarily the mountainous counties and the coastal counties of North Carolina.

A. I will admit to this, that they are mostly in the mountain section and in the coastal section.

Q. That's what I wanted, thank you.

A. I'm going to tell you that there are other sections involved, too.

Q. Of course there are; but not in the mountains entirely, and not entirely in the coastal section.

A. That's the impression you gave in your first question.

Q. I said primarily. Now, the biggest county you show on here, I believe, is Onslow County, is it not?

A. Yes, sir.

Q. Do you know where Onslow County is located?

A. Yes, I do.

Q. Is that down where Camp Lejeune is located; is it not?

A. That is correct.

Q. And the population figure 82,706, does that include the personnel stationed at Camp Lejeune?

A. I believe it does.

Q. About half of the population?

[fol. 507] A. I think it would go more than half, yes.

Q. The next largest county that you show would be, I suppose, Cleveland County, would it not?

A. 66,048.

Q. Now, that's the closest you have come; those two counties are as close as you come to a county the size of Durham, not having rail transportation, is that right?

A. I believe that's so.

Q. So, even in counting all the marines there are at Camp Lejeune, Durham is approximately a third larger than the next largest county, than the largest county on the list that you show without present rail transportation.

A. 111,995; and you said it's a third larger than what?

Q. Than the largest county you show that presently doesn't have any rail service. If you had rather give me an exact percentage, you may, of course, I'm just asking you for an approximation.

A. I'd say the nearest approach we have in population here to Durham County is Onslow County, and next would be Cleveland with 66,048; but the purpose of this is to

show that there is nothing unique about having a county that doesn't have any rail passenger service.

Q. Have you seen a county the size of Durham that doesn't have a rail passenger service?

A. My own county in Arlington, Virginia, has a population, in 1960, of 164,000; we don't have a single rail passenger station.

[fol. 508] Q. You don't have one in Arlington?

A. We don't have a rail passenger station in Arlington County.

Q. How far is that from Washington?

A. It's across the river from Washington.

Q. I mean in terms of miles.

A. Five miles; seven miles to the Alexandria station.

Q. That's about the same distance as across Durham?

A. I don't know how big Durham is, in square miles.

Q. As a matter of fact, that even used to be a part of the District of Columbia where that station was located in Arlington, isn't it?

A. What station?

Q. Your passenger station in Arlington.

A. We never had a passenger station in Arlington; Southern Railway never had one.

Q. They were always served out of Alexandria?

A. Alexandria and Washington, D. C.

Q. Incidentally, your counties are a little different in Virginia than North Carolina; you set up a city and draw a line around the city limits and that's a county, isn't it?

A. Now, wait a minute; now, if we are going to say things like that; I don't think that's quite neighborly.

Exam. Gibbons: I think we are going a little far afield, comparing counties in North Carolina and Virginia.

Mr. Burns: I agree. He was trying to talk about the [fol. 509] population of his county, when he means his city; that's what I was trying to bring out.

The Witness: What did you say?

By Mr. Burns:

Q. Now, do you know anything about the economy of any of these counties on your Exhibit H 13?

A. I don't see any reference to any of the counties' economy.

Q. I asked you if you know anything about it; if you don't, say you don't.

A. No, I don't.

Q. Have you made a computation to bring your little figures, you put in the record, up to date in line with Exhibit 4, that you brought in today, by Mr. Gleason?

A. I may have one here.

Q. If you haven't, it's all right; I just wondered if you had.

A. I have a computation, but it's not along the same line, because we didn't have a full year on it, just a five months.

Q. You didn't make any computations, I take it, using both passengers on and off at the stations in relation to the population?

A. No, sir.

Q. The people off, I take it, in your theory, do not use the train to the extent of the people getting on?

A. No, that isn't so.

Here is the theory I have about it now, Mr. Burns. Suppose someone travelling from Greensboro to Durham; now [fol. 510] that passenger would be given as a Greensboro person; anybody boarding a train out of Durham, going the other way, his fare would be collected, and he would be the fellow that would produce the revenue, when he got on the train.

Q. For example, I get on the Southern Railway train at Washington, D. C. and go to Durham; I'm not a Durham passenger, under your theory?

A. You paid your fare to Durham, and you were going to Durham, and you got off in Durham, you would be a Durham passenger.

Q. But I would not be shown on your figures?

A. For the purpose of such a computation as this, Washington, D. C. would be given credit. Mr. Gleason's Exhibit 24, all of the passengers who came north of Greensboro were given credit as Greensboro passengers, and all who went through Greensboro were given credit at whatever station they got on.

Q. Have you made a computation showing the total

Greensboro passengers in relation to Greensboro, or Guilford County?

A. Total Greensboro in relation to Guilford?

Q. That's right.

If you haven't, again, that's all right.

A. I'll give them to you. Counsel will probably want to shut me off here. Give in total; I can give it in detail; in Guilford County, the stations Gibsonville, McLeansville, and in 1959, Greensboro had 4,560 passengers; zero at McLeansville, Gibsonville, 37.

[fol. 511] Q. Is this passengers boarding the train at Greensboro, or boarding and getting off?

A. This is passengers given credit for boarding the train, under Mr. Gleason's calculation.

Q. I asked you about getting on and off at Greensboro, do you have that calculation?

A. Only on passengers.

Mr. Burns: That's all the questions I have, Mr. Bayliss.

Exam. Gibbons: Any further cross?

Mr. Jones: I would like to ask him one or two questions. I know it is time to quit, so I will be brief.

By Mr. Jones:

Q. Mr. Bayliss, you stated that Exhibit H 13, is an exhibit which shows that 50 out of a total of 100 counties in North Carolina, represented by a population of 1,315,235 people, have now no rail passenger service?

A. That is correct, sir.

Q. And if you take off these passenger trains that are involved in this hearing, that will add another 240,639 miles, would it not?

A. Miles?

Q. I mean population.

A. Yes, sir.

Q. So the total population then would be 1,555,874, that will have no rail passenger service. If you add those two figures up.

[fol. 512] A. If your figures are right, it will mean there will be that many people in those number of counties who don't have rail passenger service.

Q. That's right. And there will be an additional three

counties in the state to also add to the fifty which don't have anything now?

A. Yes, sir.

Q. That will make 53 counties out of the 100 without rail passenger service?

A. That is correct.

Q. Now, if you take these two trains off, running east and west, would there be any other rail passenger service in North Carolina, running east and west?

A. Yes, sir.

Q. Where?

A. In the upper edges of the state, we have a Seaboard,—

Q. Which is the upper edge you are talking about?

A. In the northeastern corner of the State; we have the Seaboard service to Portsmouth, Virginia.

Q. Where does it run?

A. From Norlina—you mean the points served?

Q. Yes.

A. Raleigh and Portsmouth; Raleigh, North Carolina and Portsmouth, Virginia.

Q. That's Seaboard?

A. Yes, sir.

[fol. 513] Q. It runs from Raleigh to Portsmouth?

A. Yes, sir.

Q. Is that the train that goes from Raleigh to New York? Seaboard Train?

A. I'm talking about going from Raleigh to Portsmouth.

Q. Direct from Raleigh to Portsmouth? Or does it branch off at Norlina?

A. At Norlina, or Weldon, North Carolina.

Q. In other words, that train you talk about running east and west, runs from Weldon to Portsmouth?

A. Yes, sir.

Q. And it branches off the main line and it runs from New York to, through Raleigh, on down to Florida, doesn't it?

A. The connecting train does. 17 and 18 connect with it.

Q. That's just a short distance, relatively; how far is it from Weldon to Portsmouth?

A. Well, from Norlina to Weldon is about 35 miles. And

then it's 18 miles to there, to the Virginia-North Carolina line; that's 53 miles.

That's 53 miles; east-west line would be left.

A. But its east and west.

Q. It runs east and west off the main line of the Seaboard from Weldon to Portsmouth, Virginia. Now, other than that, would there be any other east-west passenger line in the State of North Carolina?

[fol. 514] A. Yes, we have another line from Greensboro through Winston-Salem, to Asheville, and goes on over to Knoxville, Tennessee.

Q. That's the Southern that has that?

A. Southern Railway. And runs in a southerly-western direction.

Q. Goes from Greensboro?

A. To Winston-Salem to Asheville, and on over to Knoxville.

Q. So, if anybody wanted to go from Durham, North Carolina to Asheville via rail, and you take these two trains off, you would have to get to Greensboro by either car, bus, or airplane, or some other means of transportation, other than the rails?

A. Yes.

Q. And then at—Greensboro, I believe, is 53 miles or 56 miles away from Durham?

A. About 56.

Q. So in order for a person who lives in Durham, and who wanted to go from Durham to Asheville, or into Tennessee, by rail, the nearest point that he could make a rail connection to get on the train would be at a point 56 miles away?

A. That's true, but we found a long time ago that there wasn't a demand for that, when the North Carolina Utilities Commission permitted us to discontinue Trains 21 and 22 between Greensboro and Goldsboro, and they were the connecting trains for the western part of the State.

Q. At the time they gave you permission to knock that train off, you had two still running?

[fol. 515] A. That's correct, I believe.

Q. So other than the east-west train with the Seaboard that runs from Weldon to Portsmouth, Virginia, and the

Southern Train which goes from Greensboro to Winston-Salem—

A. Not from Weldon; from Raleigh to Portsmouth; you said from Weldon to Portsmouth. The train runs from Raleigh to Portsmouth.

Q. The train runs; you have to change from, or at Weldon, don't you?

A. No, sir.

Q. Is it a straight run from Raleigh to Portsmouth?

A. That's right. You get on there and don't change. You don't have to change.

Q. Other than those two trains, those are the only two that you know of that runs east and west through North Carolina, or in North Carolina?

A. No, there are more trains than that.

Q. I mean passenger trains?

A. We have a number of trains on the line between Greensboro, Winston-Salem, and Asheville.

Q. How many trains do you have running from Greensboro to Asheville?

A. Two. In each direction; but you referred to that train; there are actually two of them.

Q. You have two?

[fol. 516] A. Yes, sir.

Q. They begin at Greensboro and go west?

A. Right.

Q. If you take these two off, then your trains will all stop at Greensboro, and not come any further east; passenger trains?

A. The two we have here, there are two in each direction; and two from Greensboro to Asheville; there are two in each direction; there are four trains over there.

Q. If you take these two off, you are talking about here, you won't have any passenger train that comes east of Greensboro, will you? That's not difficult to answer, is it?

A. You don't mind if I take my time to answer it, do you?

Q. Go ahead; take all day if you want.

A. We will have a train that operates east of Greensboro that will be north and south; Reidsville, North Carolina is just east of Greensboro.

Q. Where is Reidsville?

A. Northeast of Greensboro.

Q. If you drew a straight line from north to south through Greensboro, how many degrees east of Greensboro would you say Reidsville is?

A. I don't know how many degrees it is.

Q. About three degrees?

A. I don't know how many degrees. I said it is—

[fol. 517] Q. It is almost due north, isn't it? I say, it is almost due north, isn't it?

A. No, it's northeast.

Q. It's northeast; but by a very small fraction.

A. It is still east of Greensboro, and that's the question you asked me.

Q. I asked you how many degrees; you said you didn't know.

A. I don't know the degrees.

Mr. Bryson: May I ask the witness one question?

Exam. Gibbons: Yes, sir.

By Mr. Bryson:

Q. I believe, Mr. Bayliss, the City of Durham shows that Durham has a population in excess of 70,000 people?

A. Yes, sir.

Q. Hasn't it already been established that—

A. I have the 1960 population.

Q. We will say 78,000 people; will you accept that subject to check?

A. No, I'll just tell you right now. 78,302.

Q. 78,302; I believe you testified at the hearing before the Utilities Commission that you can only recall five cities in the United States with populations in excess of 70,000 people that did not have a rail passenger transportation; isn't that true?

A. I didn't testify to any such thing before the Commission.

Q. Well, one of the railroad companies, one witness did; [fol. 518] did you hear that testimony?

A. I believe Mr. Beck gave testimony on that, but I didn't.

Mr. Bryson: All right, sir.

Exam. Gibbons: Any further cross?

(No response.)

Exam. Gibbons: The witness may be excused.

[fol. 519]

Thursday, July 13, 1961

Mr. Burns: Through the courtesy of the railroad, we would like at this time to call Dr. Thomas E. Powell, and ask that he be sworn; he has not been sworn.

Exam. Gibbons: You have this one witness?

Mr. Burns: He is from Elon College, North Carolina, and here on another matter; we would like to have him on now.

DR. T. E. POWELL was duly sworn and testified as follows:

Direct examination.

By Mr. Burns:

Q. Dr. Powell, where do you live?

A. Elon College, North Carolina.

Q. Do you want to move your seat over to the side, perhaps the Examiner can hear you a little better.

Exam. Gibbons: Dr. Powell's full name?

[fol. 520] The Witness: Thomas Edward Powell, Jr., Elon College, North Carolina.

By Mr. Burns:

Q. Are you in business at Elon College?

A. Yes, sir.

Q. What type of business do you engage in?

A. We operate the Carolina Biological Supply Company at Elon College.

Q. What type of business is that?

A. That is a biological supply business, dealing with

educational institutions throughout America, and many foreign countries, too. It has to do with the colleges, the universities, the high schools, the medical schools, the nursing schools, or any educational unit in the country teaching Biology.

Q. Would you say that your primary business was the preparation and distribution of materials to be used in teaching Biology, and related subjects, at various educational institutions?

A. That is the entire business, yes, sir.

Q. Would you describe, generally, where your various customers are located?

A. There are about 1900 colleges and universities in America, and those are our customers. In every institution in the entire United States, those are the colleges and universities, and I have no way of knowing how many high schools, but every high school that teaches Biology in the [fol. 521] entire United States is an immediate customer of ours; in addition to this, we ship to foreign countries, such as Lebanon, England, and Germany, and some to Formosa, and places like that. We have a foreign shipment, too, which is growing every year.

Q. Is the market of your company outside the State of North Carolina more important than the market inside the state?

A. Oh, yes, much more so. There are fifty states, and North Carolina is but one of those fifty states; but percentage-wise, maybe a little more in North Carolina, but there are some other states, such as California, that purchase just about as much.

Q. In getting your materials to you, to be processed, to be shipped back out again, and then, again in shipping the product back out, what method of transportation brings you your supplies, and what method do you use in sending them back out again?

A. Well, the proposition that we have here, if I qualify my statement here by saying this, that we have a lot of live material that comes to us. And if that live material is delayed in transit, even as much as six hours at times, it will come in dead. And once an animal is dead, it is no good for our purposes; it must be, it must reach us in a living state.

And so, we have been customarily using express, until the service keeps on going down; and as it goes down, we have been forced to try to use some substitute; but through the years, we have customarily used express.

Q. Would you give us some idea, the nature and extent [fol. 522] of your company's shipments by railway express?

A. By Railway Express, as of the present time, if I may refer to the sheet I have here. It's a total of 25% gross, at the present time. We use parcel post; a lot of our living cultures go by parcel post, which is also handled by your railroad train; so I don't know how to break down as between parcel post and express, but they are both together; but numerous shipments that we have, things like living cultures that the schools must have at a given date; say, they have a class at ten o'clock on Monday morning, and we've got to get it there to be in his hands at that time. Now, if it comes at two o'clock or eleven o'clock, it's no good; he has to have it for that class; and so we have to try to calculate the time interval involved and if it comes on Saturday, it's too early; so we are in a critical situation that we have to try to attempt to put it there; otherwise, it's a wash-out.

Q. You mentioned receiving living matter; do you also ship living matter?

A. Yes, we do; we receive and ship living materials. And the larger forms of material, living materials, are coming to us now by express; such things as frogs, and items like that; alligators, and various things that these people use in the courses of instruction in Biology.

Q. Are there some materials that you both receive and ship that cannot be sent through parcel post because of [fol. 523] postal regulations?

A. There are; and there is no substitute on it, if I might say; and I don't know what the ultimate; if the express is knocked out, for instance, we don't know what we are going to do. We haven't solved it because you can't put it in an airplane and send it up. A number of our items cannot undergo the high elevation that the lack of pressure that they get in these airplanes. Of course, in the cabin part

of the plane, it is controlled, but back there where the shipments go they don't usually do that; and the colder the atmosphere, and the pressure, just knocks it out, so you can't do it anyway. We have some cultures such as *Momone*, which is a genetic thing, and the Government's working in genetics, and they use this as a research proposition; we furnish this by air, for instance, and the rarified atmosphere would change the genes and the chromosomes to a point that when they got it, it didn't react properly, so we were forced to either resort to Express or Parcel Post.

Q. Would you tell me some idea of the poundage and dollar value which your company ships during, say, the last year?

A. I have before me here a sheet worked up by Mr. Elders, who is our controller; he went to the trouble to work this out by the month, the number of shipments here, and our fiscal year starts June 1st, and runs through May 31st; and for the past year, ending June 1, of this year; or May 31st of this year, we have 562 incoming shipments, and [fol. 524] we had 5,709 outgoing shipments, giving a total of 6,274 shipments by Railway Express in that year's time. The total poundage of those various shipments came to 324,683 pounds. The total value of those shipments, money-wise, came to \$610,278.76.

Now, this figure is not correct, but we have express charges that we pay, that much of it is all right. We pay \$28,018.85 on the shipments, but that does not represent the total figure, because the shipments that are prepaid to us would not be included, and a number of them come to us prepaid. And our terms are FOB Elon College, North Carolina, which means shipments going to us from the customer is paid by the customer on the other end. We don't have that figure; so it certainly would be more than twice this revenue, something between \$50,000 and \$75,000 in revenue on these various shipments.

Q. Now, you mentioned air service a moment ago.

Mr. Burns: I have a copy that Dr. Powell gave me.

The Witness: How is that, sir?

Mr. Burns: You mentioned air as a possible substitute a moment ago, and I believe you said that some of the substances which you ship simply could not be shipped by air, is that substantially correct?

A. That's right, under the present setup that they have.

Q. What about the possibility of truck service in lieu of rail service?

[fol. 525] A. Well, when we went to Elon College and opened this place up, we had five trains each way each day, and as a young fellow of 24 or 25 years old, going in business, it seemed reasonable to set up there at Elon College, and that we would be taken care of. It was a place we had five trains each way each day, so we thought that was safe; so, we started in business, thinking that we would be taken care of; so, year by year, as the years have passed, the railway came to us, Mr. Shiu is a good friend of mine and all, we are friends, and come in and horse-traded with us. "Now, if we get rid of this one train, you have got four left, is that satisfactory?" Fine; we go along with that. "Take off one more, you have got three left;" Fine, we go along with that. "Take off one more now, and you have got two left," we can handle it, that's fine; "Take off one more now, and you have still got one left." We began to back up on that one, but we finally agreed to go along with that one.

Now they come by and want to take that one off, and what does he say? "You have got a truck, the truck's going to take care of you, they put the trucks in." Well, we don't buy that; and the reason is this; trucks coming from Greensboro to our place, it is not but 17 miles, they can bring it in from Greensboro, we are not quibbling over that situation too much; but where the thing works in practice is this; we have been working under it now for a few months, and the train used to get there between 7 and 8 o'clock in the morning, every morning it came in. Now the [fol. 526] truck comes about nine or 10 o'clock, so when the train came from 7 to 8, our boys could go to work on this material, and these living things, and they could get the processing done right away; but when a truck is delayed,

and sometimes it is eleven or eleven-thirty before everything gets there, and maybe it is two o'clock before we can get it from the Express office over there, the day is shot so far as that day is concerned; it delays it.

Now, there is another angle to it, down here in eastern North Carolina, around Nag's Head and that section, we purchase from one man down there all the yellow perch that he produces. Our place is his market on yellow perch. Now, the question is, how are you going to get yellow perch from Nag's Head to us at Elon College? What they have been doing is run a truck from Nag's Head up to Norfolk, and put that fish then on express in Norfolk, and the thing would come around by Lynchburg or some kind of way, and get down here, and we get them the next morning at 7 or 8 o'clock. Well, that wasn't too bad. But this past year, something has happened, and we can't get the fish, and when they come in, there may be a large percentage of these things spoiled; it is too bad; so, the thing that is worrying us more than anything else is not this particular place that is between us and Greensboro, it is between us and Nag's Head and other places where the trucks just don't work; then there is another thing about the truck; we had a snow last year, two or three days run-[fol. 527] ning, and the trucks didn't come during that period of time. Well, we were just lucky; we didn't happen to have a shipment at that particular time; but next year we might; we could easily have \$2500 worth of necturus shipped out and piled up at Greensboro somewhere in snow, and if the trucks don't come for two or three days, they are all dead, and that is what I fear about this proposition; and it is already working in that direction.

Now, we haven't any complaint about the local people handling it; they are handling it to the best advantage; our complaint is that the trucks and these substitutes are slowing up the service which they promised us to start with, and which we feel that they have obligation to continue on, because we have an investment of a million dollars that we put there, and why did we put it there? Because we felt we could get service; and, now, that is an implied obligation, to provide the service, and they are taking it all away

from us; and we are stuck; if we had the money we would put it somewhere else; frankly speaking, that is the Sahara of North Carolina, that's between here and Greensboro; and we are near about in the middle of it.

Mr. Burns: That's all the questions I have of Dr. Powell. Did you have anything else you would like to say?

The Witness: I would just like to say in general here that we have a very special large proposition up here. There are only three in the United States of quality, and [fol. 528] we are the lone one in the entire south. And we are proud of the work which we are doing; if you ask us our classification, I don't know; nobody has ever classified us; the Federal Government was trying to check us up about the Taft-Hartley law; we sold \$10,000 worth; to the Federal Government that means that they have to check us so far as health and all that, this and the other goes; and they wanted to know about our classification. Well, nobody has ever written a classification; we are not an educational institution, and yet we don't pretend to be a business organization, either; we are somewhere in the netherlands between these two; that is, we are a professional organization. We have more professional people on our staff as a general thing than you are going to find in a Biology Department in the country, anywhere in the south in the various institutions; we have to have them, because our customers are Yale, Harvard, and the University of Illinois, Purdue, and places like that, the University of California, and if our boys don't know the answers to these things, they can't compete with the biological professors; so we are forced to go into the biology end, whether we want to or whether we don't.

Now, we are proud of this situation up there, and we don't want anything to happen to put a stumbling block between us and our customers which are scattered all over the country.

Now, these people here, the Southern Railway, we understand their problems, and we don't want to put a stumbling [fol. 529] block in their way either; but nevertheless, a business is operated on a cooperative situation. These things have to mesh, and we do a lot of intangible work, we do a lot

of work that is not necessary, so far as making money is concerned we don't make money on them; we do it to help that fellow out there; and we are proud of this work, and we want it to go ahead, and let us blossom.

Now, as a hedge on this situation, as a hedge on what is developing here, I have been through this proposition, we are building in Portland, Oregon, because we realize that these factors that we have talked about are going to pinch us down to the point that maybe we will go broke where we are; so we are starting up there, and the first question we ask when we go out there is, "What kind of a distribution center do you have?" and if he said he didn't have trains and express, we didn't consider it any further than just right there.

So I don't know, we are doing a good job here, we are the leader in the south, so far as biological supply business is concerned, there is not another one in our field and we are proud of the work; we are happy in what we are doing and we want it to continue. We are proud of North Carolina, and we are proud of the people that live here. Just don't fix it so we can't stay here. I hate to leave North Carolina.

Mr. Burns: That's all the questions I have.

Exam. Gibbons: Cross examination.

[fol. 530]

Cross examination.

By Mr. Eisenhart:

Q. Dr. Powell, when did you say you located your business at Elon College?

A. I was a college professor up there in 1920, and the idea of this business started about 1927, so being a college professor, I wasn't rolling in wealth up there, and the thing kind of started, we played it by ear as we could, and we set the year of 1927 as the year of the beginning; however, we didn't go into full force then; but that's the Alpha year, so far as the beginning year with us. It was 1927; but it didn't amount to much then.

Q. You said something in your testimony about using Railway Express, I believe, for 25% of your gross.

A. 25% of the total, that shows in this figure here.

Q. The total of what, Dr. Powell, of your production?

A. Shipments.

Q. 25% of your shipments go by Railway Express?

A. That's right, volumewise.

Q. How does the other 75% move?

A. I don't have those figures here, but I would guess that about the same volume goes by Parcel Post, so Express and Parcel Post, this is a guess, since I didn't work the figures up, and didn't realize they would be asked, but that's about half of it, and the other half goes by railroad freight, carload shipments, LCL, about 25% of them; 20 or 25 per cent of them; and the remainder goes by truck, [fol. 531] that's about the way it is broken up.

Q. What kind of truck, is that common carrier trucks?

A. Yes, common carrier trucks.

Q. By this 25% of gross that goes by Railway Express, I take it that you mean the, what used to be the Railway Express Agency, and what is now called REA, Inc.?

A. Yes. By whatever term you call it, it is the express hauled by the railroad.

Q. So that doesn't necessarily mean that 25 per cent of your gross moves on express by railroad, does it?

A. It means that the railroad originally hauled it; I don't know how they are doing it now, but it is turned over to them, whichever way they want to, it goes through them as an agent.

Q. What is your shipping point?

A. The shipping point is Burlington.

Q. Do you know that the Railway Express, when you turn it over to them, is now handling your traffic by truck, by Railway Express or by the REA truck, from Burlington to Greensboro?

A. I have been informed of that. I am not as close to all these things as I once was, when the company was smaller than it is now, and we have a regular shipping department, and they handle that. But I have been advised by them, by the grapevine, that there is a truck that runs from Burlington and comes to our place and picks it up, I'll say

that. And then they take it to Burlington, I reckon; I don't know whether they take it to Burlington, or right on to [fol. 532] Greensboro; but anyhow, that end of it, as I understand, is being handled by truck; but that is their business, and how they work it we don't question; and we have no complaint on that end, so far as the individual is concerned.

Q. Do you know, Dr. Powell, how your parcel post is handled, what mode of transportation is used when you put your product in the mail?

A. Parcel post is handled the same way.

Q. By truck?

A. By truck I think, yes.

Mr. Eisenhart; Thank you, sir.

Exam. Gibbons: You were referring to your outbound shipments, or were you referring to both inbound and outbound shipments by truck?

The Witness: You mean to us?

Exam. Gibbons: Yes.

The Witness: As it stands right now, I think that the truck brings it from Greensboro down there.

Exam. Gibbons: From Greensboro to Burlington?

The Witness: These people could answer that, whether the truck stops before it gets to Burlington and comes back to us; but at any rate, we have a long-term proposition with the express company, to pick up and deliver the express to our dock from Burlington, so it is handled through the Burlington agent.

[fol. 533] Exam. Gibbons: Is that service that you are now receiving both with regard to inbound and outbound shipments, is that service satisfactory?

The Witness: It is satisfactory as far as the individuals are concerned, they are very efficient and cooperative, they do the best they can; but the point that we are making here, is that these trucks, they handle it between us and Greensboro, that's a short run; but like from Nag's Head, it is being delayed for some reason, and we assume that it is the trucks that is delaying it between us and Nag's Head, those shipments like that; and the more trucks go in it, on the long-haul situation, the more delay we get; and we are

just afraid that this thing here is a foothold in the door that the trucks are going to go everywhere, and if they do, we are stuck.

Exam. Gibbons: No further questions, Dr. Powell. You may be excused.

Mr. Burns: Gentlemen, do you require Dr. Powell's presence further?

Mr. Dixon: No, sir.

(Witness excused.)

Exam. Gibbons: Call your next witness.

Mr. Dixon: Mr. Beck.

DAVIS H. BECK was duly sworn and testified as follows:

Direct examination.

[fol. 534] By Mr. Dixon:

Q. Please be seated and state your name, address and occupation.

A. Davis H. Beck, Washington, D. C., Passenger Traffic Manager, sir.

Q. Would you briefly describe your railroad background?

A. Yes, I have been with the railroads a little over fifty years, the last 36 with the Southern, mostly in the passenger department.

Q. Now, Mr. Beck, I understand that you have a statement dealing with passenger traffic that you want to present in this proceeding?

A. Yes, sir.

Q. Would you just go ahead and do so?

A. My name is Davis H. Beck. I am passenger traffic manager—

Q. I think, Mr. Beck, you can just start with the second paragraph of this statement, because we pretty well covered the first one.

A. If the Commission authorizes the discontinuance of Trains Nos. 13 and 16, it will be the purpose of Southern to discontinue the operation of the sleeping car between

Raleigh and New York. This car is presently handled north of Greensboro in Trains Sou 38-PRR 118 Northbound and in Trains PRR 171-Sou 29 Southbound. There is adequate sleeping car space on these trains to take care of the passengers now using the Raleigh-New York car. In addition, Southern operates Trains 34 and 48 northbound, and trains [fol. 535] 33, 37 and 47 southbound, all of which have sleeping car space available from or to Greensboro.

It is my considered opinion that if Trains Nos. 13 and 16 are discontinued, Southern will retain most of the traffic now moving to and from points on the Greensboro-Goldsboro line as far east as Mebane—a rail distance from Greensboro of 31.7 miles. In other words, I believe that traffic to and from this area will continue to use our main line trains by driving or taking the bus to and from Greensboro.

For many years Southern maintained a passenger traffic office at Raleigh. This office was staffed with five employees headed up by an assistant general passenger agent and two city passenger agents who concentrated on soliciting passenger traffic in the area between Raleigh and Burlington. These employees also worked the territory east of Raleigh although Southern has never been much of a factor in the passenger business to and from points in the latter area because of the proximity of main line service by other railroads. With the diversion of rail passenger traffic to other modes, the size of our Raleigh office had to be gradually reduced until March 1, 1957, when it was closed due to lack of passenger travel and prospects on the Greensboro-Goldsboro line.

During the time our Raleigh office was open our people intensively solicited the schools and colleges in this area and organized group travel, as well as individual travel [fol. 536] In earlier days there was a substantial amount of organized group travel by the Rotaries, Lions, Kiwanis, schools, scouts, etc. Practically all of this travel has now disappeared from the rails. Today we do occasionally handle small groups of elementary school children, most of whom travel on half fares for very short distances in Spring and early summer. A group of these children may take the train twenty-five miles or so in the morning, and

return by bus or private automobile later in the day. Some of this travel takes place on Trains Nos. 13 and 16, but unfortunately not in such volume as to sustain the operation of these trains.

Southern has done a substantial amount of advertising in an effort to generate additional passenger travel, but this effort has been of little or no avail, particularly on branch lines where the traffic density has continued to decline year after year. That has been the situation on the Greensboro-Goldsboro line, as well as on other lines of Southern Railway System.

For example, due to lack of business Southern no longer provides any passenger service on the St. Louis Division between Louisville, Kentucky, and St. Louis, Missouri, notwithstanding the fact that St. Louis is the largest city on the Southern Railway System. Southern is a Virginia corporation and its corporate headquarters is located in Richmond, Virginia. At one time we operated four pairs of trains between Richmond and Danville, Virginia. Today we operate none—the Corporation Commission of Virginia having authorized discontinuance of all passenger service [fol. 537] due to lack of business. We have no passenger service between the important cities of Birmingham and Mobile, Alabama, the last passenger trains on this line having been discontinued several years ago because of lack of business.

In 1957, the Georgia Public Service Commission denied our application to discontinue the operation of trains Nos. 26 and 27 between Macon and Brunswick, Georgia, a distance of 187 miles, which is somewhat similar to the Greensboro-Goldsboro line. In denying the application the Georgia Commission suggested that we put on new equipment, eliminate unnecessary stops, establish very low incentive round-trip fares for an experimental period of six months, and engage in a vigorous program of advertising. Although our experience elsewhere had indicated that the operating results of these trains would not improve, Southern went ahead at a substantial expense and carried out the program in full to satisfy the Georgia Commission.

Mr. Burns: Mr. Examiner, I am going to object to this, because it has no grounds in this case whatsoever.

Exam. Gibbons: Are you objecting to what the Georgia Commission—

Mr. Burns: I think all of the testimony about what other Commissions have done is completely irrelevant, primarily for this purpose, for this reason, I should say, we have no way of cross examining the witness, because we don't know anything about what the Georgia Commission did in [fol. 538] 1957, or what the Virginia Corporation Commission did, or what somebody did from St. Louis or Louisville, or what the reasons were. It may very well be that they were absolutely justified, and I assume they were, in taking off every one of those trains; and I assume that because they were allowed to take them off; but that has nothing to do with the present situation.

Exam. Gibbons: Just a moment. I would like to read this portion here on Page 3.

Mr. Dixon: Sir, I would like to say a few words, when you have read it.

Exam. Gibbons: Do you have some comment at this time, Mr. Dixon?

Mr. Dixon: Yes, Your Honor, I simply wanted to say that the railroad especially in a matter before the Interstate Commerce Commission, regards this passenger deficit problem as a regional or national problem, rather than as a state problem, or a problem confined to a single-line railroad. Our experience has been that this problem follows a set pattern, and we are offering to show here that after making four or five improvements as suggested by the Georgia Public Service Commission on a similar line, that the traffic instead of increasing continued to decline. It seems to me that it is germane to this case, especially since the witness has said that the two lines are similar.

Mr. Burns: The witness didn't testify that the lines were [fol. 539] similar in the first place, except in distance; the second thing that I would like to say to that is that I don't think anybody here has suggested a low incentive rate; in the third place what we have suggested was improvement in the basic service; and in the fourth place, if the witness is permitted to testify, I think we ought to be able to cross examine him on the basis of the success of trains in and

around the Chicago area, where these various things have been tried.

Exam. Gibbons: Where, sir?

Mr. Burns: Chicago, sir. And Northwestern is operating commuter trains on a very substantial and successful basis, as you well know, I am sure.

Exam. Gibbons: Did the North Carolina Utilities Commission suggest any changes in the operation of these two carriers, these two trains, insofar as equipment and schedules are concerned?

Mr. Burns: A suggestion made by the Supreme Court of North Carolina, and I quote; on 254 NC on Page 85: "In the event, should Southern petition for authority in the basis of its experience in subsequent operations, it would seem appropriate that it first take all reasonable steps to publicize and improve the service rendered by these trains."

Now, that was the suggestion made by the Court. I don't think there is any suggestion of reducing round-trip fares or anything like that. We do think they ought to tell the public when the trains run, and not keep them from finding out.

[fol. 540] Mr. Dixon: Mr. Examiner, it seems to us that it is not only a question of what the North Carolina Utilities Commission suggested, or what the Supreme Court of North Carolina suggested, but it is what the protestants are suggesting throughout this entire proceeding, which began before the Utilities Commission some two years ago, and they charge us with a lack of advertising, and a lack of dining car service, and a lack of this, that, and the other; and we are trying to show you that we have been through all of that on a similar line in Georgia, and it didn't get us to first base.

Exam. Gibbons: I am going to overrule the objection, and permit the witness to testify.

Mr. Bryant: May we let the record show that we move specifically to exclude the last two paragraphs of the witness' statement?

Exam. Gibbons: That is the same as the objection. The motion to strike will be denied.

Mr. Bryant: I thought it would be advisable to be specific.

Exam. Gibbons: All right.

The Witness: I will start reading again. In 1957, the Georgia Public Service Commission denied our application to discontinue the operation of Trains Nos. 26 and 27 between Macon and Brunswick, Georgia, a distance of 187 miles, which is somewhat similar to the Greensboro-Goldsboro line. In denying the application the Georgia Commission suggested that we put on new equipment, eliminate [fol. 541] unnecessary stops, establish very low incentive round-trip fares for an experimental period of six months, and engage in a vigorous program of advertising. Although our experience elsewhere had indicated that the operating results of these trains would not improve, Southern went ahead at substantial expense and carried out the program in full to satisfy the Georgia Commission. The result was exactly as Southern had predicted, namely, traffic continued to decline on the trains after the improvements in service were made and the reduced fares had become effective, so that at the end of the experimental period the Georgia Commission authorized discontinuance of the trains forthwith. I mention this example to illustrate a pattern which exists over the entire railroad of some 8,000 miles, and particularly over the branch lines. With improved highways such as are being constructed right here in North Carolina today, it is my considered opinion—

Mr. Burns: Objection, on the grounds that the witness has not laid any foundation for making any such statement.

Exam. Gibbons: What are you objecting to, the next statement?

Mr. Burns: Yes, the final sentence of his testimony.

Exam. Gibbons: I believe he indicated that he had fifty years of railroad experience.

Mr. Burns: He doesn't have fifty years of cleaning up railroad stations and things that are going to put people back on the trains; and I don't think he is qualified to give [fol. 542] an opinion until he says he knows this particular segment of the road; and then on the basis of his own personal knowledge of this segment of the road, the stations, the advertising, and everything else connected with these particular trains, and the conduct of the agents, of the stations, the availability of the agents for telephone calls, the availability of reservations, that this witness is in no

position to say anything that would be of interest in this case.

Now, he can talk all he wants to about passenger trains in other areas, and I don't care about that; but when he talks about this train, I think he ought to know what he is talking about before he expresses an opinion. If he restricts this answer to trains other than the one in question, I have no objection to it, to his answer.

Exam. Gibbons: Why is it that you object to him—

Mr. Burns: He hasn't testified that he has even seen the trains 13 and 16. I think he ought to have some knowledge of the trains before he testifies about them.

Exam. Gibbons: Do you want to qualify him further on this?

Mr. Dixon: Yes, sir.

By Mr. Dixon:

Q. Do you know anything about Trains 13 and 16?

A. Yes, sir.

Q. When did you ride them last?

A. Monday morning I rode Train 16.

Q. Are you going back on 13?

[fol. 543] A. Yes, sir.

Q. How many times have you ridden on those trains during your experience with Southern Railway?

A. I couldn't answer that definitely, I don't know, I would say maybe three or four times a year.

Q. Over a long period of years?

A. Over the last twenty-some-odd years.

Q. Do you—

A. Sometimes it is more frequently and sometimes less frequently.

Q. Do you keep in touch with the passenger service on these trains?

A. Yes.

Q. Does the solicitation of passengers or traffic on this line come into your jurisdiction?

A. Yes.

Q. How long did you have supervision over this line from a traffic passenger standpoint?

A. I have had partial supervision over this line for, since 1949.

Q. Have you or have you not seen the passenger traffic disappear from those trains over the years?

Mr. Burns: Objection. The facts speak for themselves. The record will show whether or not they have disappeared.

Exam. Gibbons: Objection sustained.

Mr. Dixon: I think he is sufficiently qualified.

Exam. Gibbons: I am going to overrule the previous [fol. 544] objection, on the witness expressing an opinion.

By Mr. Dixon:

Q. Proceed with the last sentence, Mr. Beck.

A. With improved highways which are being constructed right here in North Carolina today, it is my considered opinion, based on many years' experience in the passenger field, that the railroads have no chance whatever of attracting enough travel to make local passenger train service pay its way.

Q. You were in the courtroom yesterday, were you not?

A. Yes.

Q. Did you hear Mr. Burns suggest that we had cancelled the schedules of Trains 13 and 16, or had eliminated reference to the sleeping car from the official Railway Guide?

A. That's what I understood him to say, yes.

Q. Did you check that up last night?

A. I went to the station last night, and checked the June and July Official Railway Guide.

Q. And what did you find?

A. I found no change from the previous reference to the trains.

Q. The schedules of these trains are in the June and July Guides?

A. That's right.

Q. And does the Guide make reference to the sleeping car?

A. Yes.

Q. Now, is the company doing anything actively to promote on this line, just what do you do, you closed your Raleigh office because of lack of business?

[fol. 545] A. That's right.

Q. Is there any substitute for that? What do you do?

A. Well, we cover this territory from our Greensboro and Charlotte offices. When we feel there is any likelihood of any business materializing over here, our men come over here from Greensboro and Charlotte, as late as the fall, we heard about Duke being headed for the Cotton Bowl, so we figured that that was a good chance to pick up a special train, so we had our representatives get over here right away, and as a result we ran a special train from Durham to Dallas, Texas, for the Cotton Bowl game, carried 150-odd people. That's one example.

Q. Is that done—

A. Yes, whenever we feel that there is any chance of getting any business, we are right behind it.

Exam. Gibbons: What did you operate on that train, sleepers?

The Witness: All sleeping cars and a dining car. We ran a dining car to and from Durham.

By Mr. Dixon:

Q. Do you know how many sleeping cars there were?

A. I think there were ten, I am not positive. I think there were ten sleeping cars.

Q. And you only had 150 passengers?

A. That's right. We had ten cars; there may have been nine sleeping cars and a lounge car.

[fol. 546]. Exam. Gibbons: Proceed.

Mr. Dixon: That's all I have.

Cross examination.

By Mr. Burns:

Q. In connection with your checking of the Official Guide for June and July, did you happen to go back any time earlier than June?

A. No, there wasn't any available earlier, but I am going to. I am sure that I would have known about it, because people delight in telling you if you make a mistake; for

instance, in our last folder we left out the "C" out of Crescent. The following day I had about a dozen telephone calls about it.

Q. As I understand your testimony, you say that solicitation came under your supervision from 1949 until the present?

A. That's right.

Q. I believe in the last case, you said that you had placed one ad in newspapers in the area served by this train since 1951?

A. I don't know whether I testified that we had put one ad—did you say newspaper?

Q. Yes.

A. I showed you one piece of advertising that we had gotten out in 1951, which was the only piece of advertising I had. I still have that here, I believe.

Q. Have you placed any other ads since the last case in the newspapers?

[fol. 547] A. Yes.

Q. When was that?

A. We ran four advertisements in the Durham and Raleigh papers in 1960, four series.

Q. When?

A. In Durham, in the Herald Sun, on January 5 and 8, and in the Raleigh News and Observer-Times on the same dates. That one was an advertisement in connection with our new 8 A. M. arrival of the Crescent in New York, which gave through service for the Durham people and Raleigh people. Then on June 1st and 2nd, we ran another ad in those two papers I mentioned; "Who Says We Don't Want Passenger Business?"

And then on June 7 and 8, in both papers, and on June 21 and 22 in the Durham paper, we ran ads about big travel bargains, reduced fares which became effective the first of last June, fare and a half for the round trip.

Q. What is last June, is that '60 or '61?

A. That is '60.

Exam. Gibbons: All those dates that you have just referred to are 1960?

The Witness: Yes, all 1960; and we also ran an ad on the Duke Cotton Bowl train, and that was on December 11, 10 and 11, at Durham, and December 11 at Raleigh.

By Mr. Burns:

Q. You have also advertised in the Durham paper the success your stockholders had had, didn't you?

[fol. 548] A. Yes.

Q. Did you advertise in the Durham paper the success which the stockholders have had during the past year?

Mr. Dixon: I object to the question, it is not responsive and it is beyond the witness' field.

Mr. Burns: We will have a witness we will put in, so it doesn't make any difference. I will withdraw it, if he doesn't know; we will put it in ourselves.

By Mr. Burns:

Q. Since the time of this ad—strike that. Were you here yesterday when Mr. Gleason testified that the average passengers per trip had increased from something like 20 on these trains to something like 30, in the first few months of 1961?

A. Yes.

Q. Do you think that this advertising that you did helped bring about that 45 per cent increase?

A. No.

Q. You don't think that's what did it?

A. That was mostly elementary school children.

Q. You don't think that the advertising had anything to do with the school children getting on?

A. No.

Q. You think it had anything to do with the increase that you had in 1960 over the 1959, increase in passengers?

A. No; on this line?

[fol. 549] Q. Yes. You don't think that this had anything to do with the increase that you experienced?

A. Not with these elementary school children, no.

Q. The increase came about in spite of the advertising?

A. We just had a larger movement of school children, scouts, and clubs, and such like.

Q. You have some agents in Charlotte that you send down, for example, to Goldsboro, to determine when they need a train, is that right?

A. I didn't say we were, we sent anyone to Goldsboro; I said we sent a man over here. We do send them anywhere on the line, if there is a prospect of any travel.

Q. In other words, if somebody tells you that somebody is going to need some transportation, you will go get it?

A. That's right.

Q. If somebody doesn't tell you about it, you don't know about it?

A. We have ways of finding out about travel that moves.

Q. What are the ways you have of finding out about travel that moves?

A. For instance, we get a list of world convention dates; that list comes out every month; it is quite a voluminous pamphlet.

Q. Suppose you were to receive today an article such as you mentioned, saying that there is a world convention of the Lions Club in Chicago. What would you do as far as [fol. 550] going into this area to find out if people wanted to go?

A. That is the direct responsibility of our men at Greensboro and Winston-Salem and Charlotte.

Q. What would they do?

A. They would get in touch with the secretary or president, one of the officers.

Q. Of what?

A. Of the Lions Club, if it was the Lions Club.

Q. Where?

A. In any city.

Q. You mean they would go around calling up every Lions Club in the state?

A. That's right.

As a matter of fact, the Lions recently met at Atlantic City, and I think that was last month, in June, I believe I am right, and I know our Asheville man, a very prominent man in the club, he came over to Greensboro for a meeting.

He didn't wind up with too much business, but he made an effort to get some.

Q. I believe you also said that you have ridden this train three or four times a year for the past twenty years or so?

A. Yes.

Q. When have you ridden it, other than this trip to this hearing?

A. You mean here this year?

Q. Yes.

A. Let's see, I was down here in March, and then I think [fol. 551] in January, I am not positive about that.

Q. In connection with this proceeding before the State?

A. No.

Q. Did the various agents along the way know that you were going to come?

A. No, I don't tell them, not these agents at the station, no.

Q. Did you tell Mr. Shu?

A. No.

Q. You don't tell anybody?

A. No, I don't tell Mr. Shu, no, he is in a different department from me.

Q. You don't make a reservation, you just get on the train?

A. No, I just make my reservation at the ticket office. I don't conceal my trip, but I don't advertise it to every railroad employee.

Q. And this particular case, what suggestion has been made by the protestants insofar as new equipment that you should put on your line?

A. Well, I think we are carrying very fine equipment on this railroad, we have got one of the latest type sleeping cars over here, we have got a late coach, a first-class coach.

Q. Has anybody suggested that you ought to put on new equipment?

A. No.

Q. Has anybody suggested that you ought to eliminate unnecessary stops?

[fol. 552] A. No.

Q. Has anybody suggested that you ought to establish reduced round trip fares?

A. We have already done that. We didn't need anybody, we did that the first of last June.

Q. Has anybody suggested that in this case?

A. No, not to my knowledge.

Q. The round trip fares that were reduced on this line, were they any different than the round trip—

A. No, the same thing.

Q. You have heard, I take it, that we suggest that you ought to clean up the stations that you have?

A. I don't have anything to do with the stations.

Q. You don't?

A. No.

Q. Your testimony should be restricted to trains and not stations, is that correct?

A. Yes, I don't have anything to do with the ticket office.

Q. Who does that come under?

A. The operating department.

Q. Is there anybody here who would have that type of authority?

A. Yes.

Q. Who?

A. I believe Superintendent Shu.

Q. Your concern is strictly for the trains themselves?

[fol. 553] A. The passengers, yes. My job is strictly the solicitation and servicing of all the details in connection with controlling passenger traffic for our service.

Q. How about the comfort of the passengers on your train?

A. Oh, yes. I am interested in that.

Q. You have heard some mention of air-conditioning being broken on some of the cars, have you not?

A. I heard that gentleman yesterday mention that there was some trouble, and I have asked Washington to look into that.

Q. You didn't look into it yourself?

A. I didn't have an opportunity last night. The train had left here before I left the hearing room.

Q. Have you checked to see whether anything is broken down here at this station in connection with pre-cooling equipment?

A. I know that their facilities down there, that they have facilities down there for pre-cooling the equipment.

Q. Have you checked to see that the facilities are used, or are broken?

A. I checked Monday morning, yes, sir.

Q. Are they broken?

A. No, the facilities I saw were operating.

Q. There are broken facilities that are located where the trains are usually located, are there not?

A. I think so; but there is a place where a car can be parked.

Q. Where is that place?

[fol. 554] A. I don't know how to describe it.

Q. In relation to the front of the station?

A. It is almost in front of the station, on the second track, I believe, the second track from the platform.

Q. You do try to keep in touch with the ticket agents, I take it?

A. Yes; I try to keep in touch with our ticket agents.

Q. Has your company made plans to provide someone that can make return reservations at the Durham station at the time that these trains arrive?

A. I believe the ticket agent here does not come on duty until ten o'clock in the morning.

Q. In other words, he doesn't come on until after this train has come in from Greensboro and gone on to Goldsboro?

A. That's right.

Q. Have you made arrangements to provide some method by which the passengers from New York without return reservations can make those before he leaves the station, when he arrives in Durham?

A. If they would come in here on the train, and it gets in here on time at 7:55 in the morning, there would be nobody on duty at this station to make the reservations.

Q. So he would have to try to call up later?

A. That's right.

Q. I take it that the agent here also goes to lunch sometime?

[fol. 555] A. That I don't know. I believe the hours are from ten to six, but I am not positive, about that.

Q. The last case, there was some mention of the fact that you did take an hour for lunch, from say 12:30 to 1:30? That he did?

A. Could be, I don't know.

Q. If he does take a lunch hour, do you have anybody there who could make reservations, or handle phone calls?

A. I don't believe so.

Q. Other than the single agent you have in Durham, what other personnel can handle and make reservations in Durham?

A. We have a traffic office there.

Q. Where?

A. At Durham.

Q. What type of office?

A. Freight office.

Q. Is that at the Union Station?

A. No, it is at the freight station.

Q. Do you let the passengers who might use the train in Durham know that they are supposed to go to the freight station to get their tickets?

A. No, we maintain a ticket office which is open from ten to six, as I understand it, daily, at the passenger station.

Q. At any time when they can't get hold of the agent for any reason, at the Durham station, they would not know to call at the traffic office at your freight station, would they? [fol. 556]

A. I don't believe the average person would, no.

Q. Passengers spoke of going to the Sugar Bowl from Durham, Cotton Bowl, pardon me. I insulted Mr. Bryson from Duke University; in connection with the trip to the Cotton Bowl, that people who went to the Cotton Bowl--did any of the passengers that went on any of those trips end up in the figures that you show in regards to Trains 13 and 16?

A. No.

Q. Most of these special movements about which you speak are movements that are handled in separate cars, or separate trains?

A. If they require a special train, of course, the revenues will not be credited to 13 and 16. Of course if there is just one or two cars that are handled on the train, then of course the revenue would go to those trains.

Q. If Trains 13 and 16 are discontinued, would it be your intention as General Passenger Agent for Southern Railway Company to continue to try to obtain these special movements from Goldsboro, Durham and Raleigh, over this same segment of the line which is now used by Trains 13 and 16?

A. It would be, yes, we do it at other points on the railroad.

Q. You were the gentleman, I believe, that was asked about cities of approximately 80,000 in the United States without rail passenger service in the last case?

A. That's right.

[fol. 557] Q. I believe you testified as to Fall River and Bedford, Mass., Troy, New York, Summerville, Mass., and Santa Monica, California?

A. That's right.

Q. Any others?

A. I think the question was, How many above 70,000, 75,000; that's all that I know over 70,000.

Q. Have you attempted to put a coke machine in the Durham station?

A. No, not to my knowledge, I don't know, there may be, I don't know.

Q. A peanut machine?

A. Not to my knowledge, I had a cup of coffee there the other morning.

Q. Do you know whether or not Seaboard Air Line Railroad has a ticket agent in Durham, North Carolina?

A. They have a passenger representative there, I believe they do sell tickets.

Q. Do you know how many employees Seaboard maintains in Durham in connection with the passenger service?

A. No. There used to be just the one person.

Q. Do you know whether or not they have a telephone listed under Seaboard Air Line Railroad?

A. I believe they do.

Q. Do you know whether or not special arrangements are made by Seaboard to transport baggage to the Raleigh [fol. 558] station to catch a Seaboard train, from—

A. I didn't know that.

Q. Isn't it a fact that not all trains are losing money?

A. Well, all of our passenger trains are in the red, when you take into consideration the ICC formula.

Q. That does not necessarily reflect that the trains are operating in the red, and the formula itself might be wrong?

A. Most of our passenger trains are in the black when you take into the consideration the out-of-pocket costs.

Q. It is true that other railroads in the country, that they have trains that are operating at a substantial profit?

A. I suppose there are.

Q. And it is true that some of the so-called commuter trains are actually making a profit, is it not?

A. I don't think so, it may be, I don't think so. Not the commuters.

Q. Are you familiar with the Chicago situation I had reference to?

A. Not too familiar, no. You mean this commuter, no, I am not too familiar with that.

Q. You don't know whether the railroad there in Chicago is making a profit on the commuter system?

A. No, I don't.

Q. You said that you did close your office here in Raleigh in 1957, is that right?

[fol: 559] A. That's right.

Q. Since that time, you have not maintained a passenger agent in Raleigh?

A. That's correct.

Q. Prior to 1957, did you have an agent in Durham or Burlington or Goldsboro?

A. Not a passenger department representative, no.

Q. So you don't have any passenger department representative or you have not had any passenger department representative since 1957 at any of the stations on this route, except Greensboro?

A. That's correct.

Q. You mentioned school children in your prepared testimony on Page 2, and say that some of the children may take the train 25 miles or so in the morning, and return by bus or private automobile later in the day. One of the reasons why that is true, that they may take the bus or car back,

would be that you don't have rail facilities provided, is that not correct?

A. Unless they want to wait over for the return trip. Most of them don't want to do that.

Mr. Burns: That's all the questions I have of Mr. Beck.

By Mr. Bryant:

Q. Mr. Beck, you may have answered this question. I would like to know how long you have been the passenger traffic manager for the Southern Railway Company?

A. Since the first of July.

[fol. 560] Q. This year?

A. Yes.

Q. And prior to that time, were you the assistant passenger traffic manager?

A. Yes, for two or three years; and prior to that, I was general passenger agent.

Q. Maybe you can tell us, sir, when the Southern first determined it wanted to discontinue these passenger, these two passenger trains?

A. When did we first determine it?

Q. Yes.

A. I think it was in '58; '58, I believe, we filed application for discontinuance, I am not positive about that.

Q. I wasn't asking particularly about the date when you filed the application, but how long before that had it been when you reached, when Southern reached the conclusion that it wanted to discontinue Trains 13 and 16?

A. Well, in the passenger department I have felt that way for quite a long while, particularly since 1957, when we had to close our office here in Raleigh.

Q. You say you felt that way in the passenger department for quite a long while; how many years back could you date that? Prior to 1958, when you say you filed your first application?

A. Well, our traffic on this line started going down in 1946 and '47; it kept getting progressively worse.

[fol. 561] Q. Would you say that the Southern determined as far back as 1946 or '47 that it wanted to discontinue these operations, of Trains 13 and 16?

A. No, I wouldn't say that, no. I say I felt that way since 1957.

Q. How about the rest of the department, I am trying to find out when the Southern first determined when it would like to dispose, or discontinue these two trains.

A. I couldn't answer that.

Q. Prior to 1957?

A. I don't know. I am just telling you how I felt.

Q. Well, Mr. Beck, if you are connected with the passenger traffic department, did you have anything to do whatsoever with making the policies of the company?

A. No, sir.

Q. Or suggesting the policy of the company?

A. No, sir.

Q. But you would say that as long as four years ago, the Southern determined that it wanted to discontinue these two trains?

A. I would say that I in the passenger department felt that when we had to close our office here in 1957, because of lack of travel on this line, I felt myself that the trains, that was my personal opinion.

Q. After they reached the conclusion that they desired [fol. 562] to discontinue these trains, I ask you if you don't know as a fact that it has been quite difficult to obtain information in New York, Philadelphia, and other cities along the route of this Pullman car, about the fact that this Pullman car did come to Durham and serve Durham?

And also that there was a Pullman car that left Durham?

A. I don't see why there would be any difficulty; the Pennsylvania, of course, the operation is over their line, and they maintain offices at New York, Wilmington, Philadelphia, Trenton, and I have never had any complaint about people not being able to get information about our services.

Q. Let me ask you if it has not been brought to your attention numerous instances in which people in New York will give an erroneous piece of information to the effect that these Pullman cars did not operate into Durham and out of Durham?

A. I don't know that.

Q. I ask you also if there has not been brought to your attention, as a member of the passenger traffic department,

that people have been unable to make reservations on these cars in New York, Philadelphia, Washington, and other places?

A. The only thing I know of about it, is the newspaper clipping that was sent some time ago to our office, out of the Durham paper:

Q. Yes, sir.

A. I read that, and I asked the New York man what he [fol. 563] knew about it, and he said nobody up there had been giving any erroneous information.

Q. That was information to the effect, the erroneous information was given out about this service?

A. We had no knowledge of it.

Q. I am saying what you knew after you read the paper.

A. I saw this clipping.

Q. What did that say?

A. I don't remember, exactly.

Mr. Dixon: Mr. Examiner, I object to these newspaper clippings. It is all hearsay; if they have evidence of the facts, I think they ought to bring the witnesses in here and give us a chance to ask them a few questions. Who did they phone in New York; maybe it was the Santa Fe or the Lackawanna; I don't know.

Mr. Bryant: I am asking him what information he had about a matter which came under the jurisdiction of his department.

The Witness: This is the only information I had, the clipping out of the Durham paper.

By Mr. Bryant:

Q. You did have that information, did you not?

A. Yes. But I investigated, and found out that nobody knew anything about it.

Q. Do you mind if I see what you have reference to there?

A. Yes.

Mr. Burns: I believe the last page.

[fol. 564]

By Mr. Bryant:

Q. Well, without stopping to go into this, do you object if we ask that this be marked, not as being offered, but identified?

Mr. Dixon: I certainly do object.

Exam. Gibbons: There has been an objection raised. I don't want to have a newspaper clipping in the record in this case. If the purpose of your inquiry is to elicit from the witness how information came to his attention, and if it did come to his attention through the newspaper medium, I think that type of inquiry can be made. I believe the witness has already indicated that the information did come to his attention through the newspaper; but as far as getting it into the record, I am not going to proceed to permit that.

Mr. Bryant: Very well, and thank you.

By Mr. Bryant:

Q. Then you did have information from what you had read that it was difficult to make such reservations on this train, did you not?

A. From this newspaper clipping.

Q. Now, Mr. Beck, if the Southern determined in 19— strike that question, please; do you know when the luncheon or food facilities were taken out of the Durham station?

A. I believe that was back in 1957, I am not positive, I think it was in 1957.

Q. So that just about was co-existent with the time that the Southern determined to try to eliminate these trains? [fol. 565] A. Not the Southern, I said that's when I formed that opinion. I didn't say the Southern.

Q. That happened about the same time that you formed the opinion that these trains ought to be eliminated, and since that time there has not been one facility of any kind for purchasing either food or drink at the Durham station, has there?

A. Not since that concession closed, whenever it was.

Q. And you think that was about '57?

A. That is my guess, yes.

Q. You told the Examiner a few moments ago that someone provided you at the Durham station with a cup of coffee. I don't know that that is particularly important, but I just want to clarify as to whether you purchased it from some facility at the station or whether it was given to you as an act of courtesy by someone?

A. Well, there was, I saw a couple of men standing around with a coffee pot in what used to be the old concession, and I said, "How do you go about getting a cup of coffee?" and they said, "Well, just put a quarter in there, and have a cup," so I dropped a quarter in this cup, and had myself a cup of coffee. I don't know who owned it or who provided it, or anything about it.

Q. You don't know whether that was provided by the employees for their own convenience?

[fol 566] A. I think maybe it was.

Q. Not for the public generally?

A. No.

Q. Has anything been done since the last hearing of this matter before the Commission to improve the equipment on the road?

A. No, we think we have got good equipment; we have got the very latest sleeping car operating on this run, the coaches are good coaches; we think the equipment of the trains are all right as they are.

Q. I ask you, Mr. Beck, if you do not know that the Southern, when this pre-cooling equipment broke here in Raleigh, if you did not decide and so announce to the employees that it did not intend to repair that equipment to make it effective?

A. I don't know anything about that. There is a facility down there that is operative.

Q. Mr. Beck, who holds the position corresponding to yours with reference to the freight traffic of the Southern; embracing this route from Greensboro to Goldsboro?

A. A man by the name of Shell; we have a man by the name of Shell in Raleigh, I believe it is Shell, and we have a man by the name of Elder in Durham.

Q. Do they hold positions comparable with yours now?

A. No.

Q. You are the passenger traffic manager?
[fol. 567] A. No, their position would not be comparable to mine.

Q. Who is the freight traffic manager?

A. They report to, I believe, the freight traffic manager at Greensboro.

Q. Who is that?

A. Mr. Bondaret.

Q. What I am trying to get at is this; who in your organization could tell us the comparative value of this route from Greensboro to Goldsboro as a producer of freight traffic, as compared to the rest of the Southern Railway Company line?

A. I don't know exactly. It would probably have to be someone in Washington.

Q. Is that where your office is?

A. My office is in Washington.

Q. Is your office in the Southern Railway Building in Washington?

A. Yes.

Q. You do not know who is in charge of the freight traffic for the Southern Railway?

A. Yes, Mr. W. M. King is our vice-president in charge of freight and passengers.

Q. Who is in charge of freight?

A. We have two representatives.

Q. What are their names, sir?

A. I gave you their names, Mr. Shell is here in Raleigh, [fol. 568] and Mr. Elder at Greensboro. Mr. M. H. Shell, he is the assistant freight agent, and he is charged with the solicitation of freight traffic in the Raleigh territory.

Mr. Elder, T. C. Elder, is division freight agent at Durham, and he is charged with the solicitation of freight in the Durham area.

Now, I believe both of those men, and I am not sure, I believe both of them report to Mr. Bondaret at Greensboro, but I am not certain about that.

Q. Who is the general freight traffic manager of the Southern Railway Company?

A. Mr. W. Mason King is vice-president of the traffic department of the Southern Railway.

Q. He is in Washington?

A. Yes.

Mr. Byrant: All right, thank you, that's all I have.

Mr. Bryson: Mr. Examiner, I don't want to prolong this too long, but I do want to ask Mr. Beck one or two questions.

By Mr. Bryson:

Q. Mr. Beck, in your statement I believe you said that your Raleigh office was closed as of March 1, 1957, and I believe you further stated that during that time and up until March 1, 1957, you intensively solicited the schools and colleges in this general area?

A. That's right.

Q. Could you tell me what intensive solicitation you did at the schools and colleges, and particularly on the campus [fol. 569] of Duke University during the year 1957?

A. Well, the office closed March 1, '57.

Q. It was open three months during that—

A. It was open two months, and the representative we had here was calling on the college.

Q. Do you know what he was doing with respect to solicitation in a specific manner? You said that they intensively solicited these schools?

A. That's right.

Q. What do you mean by intensively soliciting?

A. They called on them every time, for instance, Christmas vacation they would go over to the Dean's office and call on them, and in years gone by, many years ago, they used to set up an office. I don't recall which office.

Q. Do you know for a fact, Mr. Beck, that representatives of the Railroad Company were on the campus and in the Dean's office at vacation time?

A. Back years ago, yes.

Q. I am talking about now, say up until March 1, 1957?

A. Up to that time, yes, they were.

Q. They were?

A. Yes.

Q. Did you do anything other than at vacation time towards soliciting patronage on the campus of Duke or any other university?

[fol. 570] A. At the schools we would, first of all we would solicit the inbound movement.

Q. You solicited what?

A. The inbound movement of students when the colleges opened in the fall; we intensively solicited those.

Q. Why would you do that, Mr. Beck?

A. New York and Philadelphia—

Q. But students come from many other sections other than New York and Philadelphia, do they not?

A. That's right. But we had a great flow of travel from the east. We used to run two or three special trains down here. I have ridden them.

Q. Have you done anything since March 15, 1957, in the way of soliciting patronage from these schools and universities except when maybe we had a football game?

A. No, sir.

Q. Absolutely nothing?

A. That's right.

Q. Now, don't you know as a matter of fact, Mr. Beck, that at Duke University, at the University of North Carolina, and at North Carolina College, Duke University and North Carolina College being located in Durham, and the University of North Carolina being located at Chapel Hill, there is some 18 to 20 thousand students at those institutions?

A. I know they have quite a large enrollment.

[fol. 571] Q. Don't you know if you add the faculty and staff, that you have a population of some 20 to 25 thousand connected with those institutions?

A. Yes.

Q. And you are doing absolutely nothing at the present time to solicit that patronage, except when one of the institutions happens to go to a football game?

A. The reason we did is because we were not getting any traffic; they were all using their own private automobiles, forming car pools, very little travel—

Q. Isn't it a fact that you were making no effort to get it?

A. It wasn't worth while.

Q. Would you answer my question, you are not making any effort to get it right now, are you, and you haven't for several years, have you?

A. That's right, since 1957.

Q. And I believe you stated a few minutes ago that now your attitude toward the passenger traffic in this area is that only when there is likelihood of business, do you do any solicitation whatsoever?

A. That's right.

Q. That's correct, isn't it?

A. Yes. It is not worth our while, we can't justify it.

Exam. Gibbons: Do you solicit any of the Athletic Departments at the colleges?

[fol. 572] The Witness: Oh, yes.

Exam. Gibbons: Are you currently doing that?

The Witness: Yes.

Exam. Gibbons: How do the football teams of these various universities travel?

The Witness: They all fly.

Mr. Bryson: Would you talk a little louder? Excuse me, Mr. Examiner.

The Witness: He asked me how the football teams traveled.

Exam. Gibbons: How the football teams of these three colleges travel?

The Witness: By air.

Exam. Gibbons: And that movement to Dallas, that special movement, where you had 150 passengers, did that include the Duke football team?

The Witness: No, the Duke team flew down.

Exam. Gibbons: Just the spectators?

The Witness: Well, they were alumni, for the most part.

By Mr. Bryson:

Q. I will ask you if the Duke University band didn't patronize your train down there at that time?

A. Yes. They didn't take the whole unit, they took part of the band.

Mr. Bryson: I didn't mean to interrupt you, sir, go ahead.

By Mr. Bryson:

Q. The truth about the business is that this year, the first of the year came on, I think the game was played on [fol. 573] the second of January, was it not, Mr. Beck?

A. Yes, that was on Monday.

Q. School opened on the third?

A. That's right, I believe so, although I think they let them get back here on the fourth.

Q. I beg your pardon, sir, you are incorrect on your assumption on that; that was one of the reasons that we didn't have more students that went to the game, because of the opening of the school the next day after the football game.

Exam. Gibbons: Why would you carry nine or ten sleepers on that train?

The Witness: I said before I wasn't sure, I think we had nine sleeping cars and a lounge car and a dining car. It averaged a little bit better than, I believe, sixteen or seventeen people per car.

Exam. Gibbons: Is that capacity? For a sleeper? Or average?

The Witness: That's about average. If you can get a loading of 15 or 16 or 17 you have done pretty good. The capacity of our light-weight sleeping cars, you have a capacity of 22 if they are occupied double; otherwise you have 16.

Exam. Gibbons: You said the football teams do not patronize the railroads as a means of getting to and from games, is that what you said, is that your testimony?

The Witness: No, we are getting very little football traffic, very little of that; most of it is flying.

[fol. 574] Exam. Gibbons: Are you positive about that?

The Witness: Yes, sir, we have very little; I think we had a movement out of the University of Mississippi to Knoxville; I think that was the last one we had, two or three carloads; and then we had a movement from Knoxville to Lexington, Kentucky, but most of it is air.

Exam. Gibbons: It didn't affect this line?

The Witness: No.

Exam. Gibbons: Any further questions?

Mr. Graham: I would like to ask one or two questions.

By Mr. Graham:

Q. I was interested in your testimony a few moments ago to the effect that the advertising which appeared in Durham and Raleigh papers on two or three occasions during 1960, I believe you said there were two days in January, and two days in June, am I correct?

A. Two days in January, and two days in June, in both towns, that's with specific ads, and four days in June on another ad in Durham, and two days in Raleigh was a third ad.

Q. That was subsequent to the hearing which was held in 1959, here in Raleigh, on Southern's petition to discontinue Trains 16 and 13, which was heard before the North Carolina Utilities Commission, correct?

A. Yes.

Q. At that hearing, I believe you testified that so far as you could recall, Southern had advertised only once in the [fol. 575] Durham area, and I think that was 1951, and you had some folder or leaflet to that effect. Now, by the time that the advertisement was put in those papers in January and June of 1960, the decision had been made by Southern Railway at that time that as soon as it was permitted to do so, it was going to discontinue those trains, had it not?

A. That's right.

Q. What, then, was the purpose of the ad, Mr. Beck?

A. This first ad, we improved the schedule to New York, it got into New York at eight instead of nine; we wanted to tell the people in this territory about that improved service. That was the first ad. The second ad was our ad entitled, "Who says we don't want passenger business?"

We wanted to tell the people that story. The third ad was after we established, after we made this further reduction in fares on June 1, 1960; we wanted to tell them about that.

Q. Was it the purpose of those ads to try to increase the passenger use of those trains?

A. Yes, absolutely.

Q. Is it your position that by advertising of an isolated, spasmodic nature of that kind, that you could actually hope to build up passenger clientele?

A. We thought this would be helpful. We didn't feel that we could justify doing any more advertising, spending any more money over here.

[fol. 576] Q. I ask you, Mr. Beck, if the real purpose of those ads wasn't to put you in a position where you could testify, as you are this morning, that those ads were run?

A. No, sir.

Q. And at future hearings?

A. No, sir.

Q. That had nothing to do with it?

A. No, sir.

Q. Isn't it true, really, that the Southern is not interested in doing anything to increase passenger clientele or use of a particular line, once the determination has been made that that line has to go?

A. No, I wouldn't say that. Like on this line here, it has proven out that there is just no hope or prospect of improving our revenues on this line; for that reason we just don't feel like we can justify spending any more money, other than what we have spent.

Q. In other words, once the decision has been made, there is nothing that can come along to alter it, is that what it amounts to?

A. I wouldn't put it that way.

Mr. Graham: That's all, sir.

Mr. Bryant: I have one question, please.

By Mr. Bryant:

Q. Whose decision was it for the Southern not to protest the removal of the express from these trains?

[fol. 577] A. I don't know. I don't have anything to do with express.

Q. You do know that the Southern did not protest the removal of the mail or the express from these trains?

A. I didn't know that, no.

Mr. Bryant: All right.

A. I have nothing to do with the express.

By Mr. Burns:

Q. I have one question about a football game. In the last case there was evidence that the Army football team was going to use the train to Durham to play Duke University football?

A. They did and they had a good train.

Q. The only kind of game that the train could be used for would be games played in the Washington-New York area, is that right?

A. The only time trains could be used?

Q. That's right.

A. No, they would go anywhere.

Q. Could Trains 13 and 16 be used to get Duke to Columbia, South Carolina?

A. Not on a convenient schedule, no.

Q. Or Carolina to Columbia, South Carolina? To Atlanta, Georgia?

A. We could do Atlanta, yes.

Q. How about Florida?

A. No. Seaboard would be the logical way to go to Florida from here.

[fol. 578] Q. In other words, except for games in the Washington-New York area, it would be unlikely that the train could be used by those teams?

A. No, it is not unlikely, they could use them, we have got the service there, if people would use it we would take care of them.

Q. What kind of connections do you make with either of these trains for, say, Atlanta?

A. It gets into Greensboro, this train gets into Greensboro at 7:50 at night, Train No. 13, and the connection to

Atlanta goes out, No. 35, at 8:00; gets into Atlanta at 7:30 the next morning.

Q. In other words, the passengers would get there at 7:50? They would get into Greensboro at 7:50, and leave at 8:00; and of course they would have to get off the train, with all their baggage and football gear?

A. If there was enough of them, we would run a through car, and they wouldn't have to change.

Q. How about the places like UCLA in California, and places like that? Are the trains any use for getting to games in places like that?

A. I don't think the schools could spare that much time.

Mr. Burns: That's all the questions I have.

Mr. Jones: I would like to ask two or three questions, if I [fol. 579] might.

By Mr. Jones:

Q. Mr. Beck, I believe the Seaboard runs a north and south train that comes through Raleigh from the north down to Florida?

A. Yes.

Q. Do you know, is it not a fact that the Seaboard maintains a ticket agency or representative in Durham?

A. They did have a girl there, a girl representative there at Durham; I think she is still there.

Q. Still there, isn't she?

A. I think so, I am not sure.

Q. Although the Seaboard train doesn't run to Durham, they have a ticket representative in Durham?

A. That's right.

Q. Now, I believe you said that the only ticket agent or agency that you have after about six o'clock in the afternoon in Durham is the freight station man?

A. No, I didn't say the freight station man, I don't believe he—

Q. Well—

A. —he is not on duty after six o'clock.

Q. You don't have anybody, then, after six o'clock, do you?

A. Not to my knowledge.

Q. Now, let me ask you, Mr. Beck, about the procedure, or the custom; I don't know how it works; suppose for instance that I was in New York City, and I wanted to [fol. 580] come to Durham by train, by the Southern, and I went to the Pennsylvania station there, and I undertook to buy a ticket and make a reservation; the ticket agent there, I presume, would have a schedule or a certain time-table, and so forth, and he would be able to give me the information whether I could get on the train, whether or not there was train service to Durham?

A. That's right.

Q. How would he find out whether there was or was not train service by the Southern Railway to Durham, would that be through the activity of Southern Railway to post that station to that effect?

A. That railroad station, in New York, like every other railroad station, receives the Official Guide, which comes out monthly, and which contains a passenger timetable of all railroads throughout the United States. He has got that. In addition we furnish him with supplies of these timetable folders of ours, every issue.

Q. The specific point that I am concerned with is, as to the Southern operations, whether or not there is a train available to Durham, and whether or not there is a Pullman available to Durham. That information is furnished by Southern in the Official Guide, is it not?

A. Yes, we furnish the timetables to the Guide people. We furnish our timetables.

Q. And whatever, whenever there is a change made in [fol. 581] the Southern's operations, of course there is an amendment or change made in the official Guide and in the timetables which are furnished these stations?

A. That's right.

Q. They go by what you furnish them?

A. That's true.

Q. That's true, I believe you stated, of all these stations, New Orleans, for instance, Philadelphia, and so forth?

A. Yes.

Q. So if a person within the past six months was in New York City, a resident of the city of Durham, and he wanted to get a reservation back to the city of Durham, over the

Southern, and the ticket agent at the Pennsylvania Railroad advised him that there was no section or passenger service available, you would be surprised to hear that, wouldn't you?

A. -Very much so.

Q. And if this particular man told the passenger man in the station that he knew there was some kind of passenger service available, and he was going back to the hotel and whenever they found out they should or should not sell him a ticket, that he would stay at the hotel and just charge it to the railroad until he got a ticket, and about five hours later the railroad sent a messenger and told him that he could get the ticket, and he got it and came to Durham; you would be surprised to hear that tale, wouldn't you?

[fol. 582] A. Yes.

Q. If a person who lives in Durham, North Carolina, and who happened to be in New Orleans, wanted to come back to Durham, within the past five or six months, and was given about the same story in New Orleans about there being no trains, that would also surprise you, I take it?

A. Yes, sir.

Q. I know you make up your schedule and furnish it, and put it in this Guidebook, or whatever the publication is you just referred to, and make your timetables, and disseminate that around to the various stations, then what they do with it, I understand, you don't have anything to do with; in other words, this agent that I mentioned in the case in New York a while ago, he wouldn't be your employee?

A. That is Pennsylvania Railroad.

Q. That would be the same way down in New Orleans?

A. Well, we maintain a passenger representative there in New Orleans, and we maintain a passenger office in the New Orleans passenger station, it is upstairs, the ticket office in the Union Terminal there is a joint operation for all railroads.

Q. Do you have any way of checking what goes on at these stations?

A. Yes.

Q. That kind of information that is passed out?

A. Absolutely, our passenger representatives in that ter-

[fol. 583] ritory are continually moving around, talking to the local ticket agents, and by the same token, I get out too, as much as possible.

Q. Do you have any idea how it happened that that information, which happened, the same type of information, about the same time, in New Orleans and the one case in New York, and the other case about your train service—

Mr. Dixon: Mr. Examiner, it hasn't been proved in this record that it has happened yet, and I object to any further questioning along this line until witnesses are put on the stand, and proof—

Mr. Jones: If he doesn't know—

Exam. Gibbons: Just a moment. Does the witness know this to be a fact, do you agree with Mr. Jones?

The Witness: I am amazed to hear anything like that. It could be a mistake; they do happen, mistakes happen, but I am amazed to hear it, because we have got, the Pennsylvania Railroad's employees are a very competent staff at Penn Station, and most of them are seasoned employees, and the same is true in New Orleans. I just can't—

Mr. Jones: I was just wondering why these things happen, and how they happen, and whether you have any way of checking, to straighten them out.

Exam. Gibbons: Just a moment. There is an objection pending, and until such time as evidence of these two [fol. 584] occurrences have been placed into the record, I am going to sustain the objection. You can have an opportunity to put that in.

Mr. Burns: He will be available after we put on witnesses to testify about these incidents?

Mr. Jones: I think that's all I have.

Mr. Bryant: I apologize, I would like to ask one more question.

By Mr. Bryant:

Q. You said that you had closed your passenger travel office in Greensboro, Goldsboro, line, in Raleigh in 1957. Was the date of that March 1, 1957?

A. Yes.

Q. I believe you said when that was closed you had

definitely determined that these two passenger trains ought to be discontinued?

A. I determined that in my own mind.

Q. And Mr. Beck, is it not a fact that from that time on, the Southern has done everything possible to try to wean the public from the use of these two trains, 13 and 16?

A. I don't agree with you. No, sir, we haven't done a thing.

Q. Who makes the decision of whether the Southern will make an effort to take these trains off?

A. That is management.

Q. Sir?

A. That's management.

[fol. 585] Q. You said that was your decision?

A. No, I said that I formed my own personal opinion that the trains should come off, but management makes the decisions, I don't.

Q. Who is management, please?

A. Well, that is the president, vice-president.

Q. Do you participate in the discussions as to the formulation of that policy?

A. No, sir.

Q. Do you make recommendations?

A. No, sir, unless I am called upon.

Q. Well, in a matter of that kind, wouldn't you be called upon?

A. I wasn't called on, no.

Q. Since this was in your department, who did call these Trains 13 and 16 to management's attention?

A. I don't know.

Q. You told us that there was a decision reached by management; independent of any request upon them by you, as to your opinion about it?

A. They didn't make any request to me.

Q. You knew, did you not, Mr. Beck, that if you were to be permitted to take them off, you would have to present a case to the Utilities Commission of the State of North Carolina, and get permission from them?

[fol. 586] A. Yes.

Q. I take it your answer is yes?

A. Yes.

Mr. Bryant: All right, thank you, that's all.

Mr. Holton: About two questions, please.

By Mr. Holton:

Q. Mr. Beck, does the Southern Railroad offer any service between Macon, Georgia, and Brunswick, Georgia, today?

A. Yes, sir.

Q. In other words, trains 26 and 27 were not the last two trains?

A. That's right.

Mr. Holton: Thank you.

Exam. Gibbons: The witness may be excused.

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[fol. 587] I. H. HINTON was duly affirmed and testified as follows:

Direct examination.

By Mr. Burns:

Q. Mr. Hinton, would you please state your name and address for the record?

A. I. H. Hinton.

Q. Well, how do you spell that, sir?

A. H-i-n-t-o-n, assistant director of traffic in the North Carolina Utilities Commission.

Q. How long have you been with the North Carolina Utilities Commission?

A. Since September, 1949.

Q. In your capacity as assistant director of the traffic department of the Utilities Commission, do you, in the course of your official business, receive reports from inspectors of the North Carolina Utilities Commission concerning various stations used by railroads in North Carolina?

A. That is correct.

Q. How often are these reports made to your office?
[fol. 588] A. Monthly.

Q. Are the reports in writing?

A. Yes, sir.

Q. Do you have, have you brought with you, originals of the reports covering the station at Greensboro, North Carolina, for the month of June, 1961, that is the Southern Railway station at Greensboro?

A. Yes, sir.

Q. What was the date of that report?

A. June 14, 1961.

Q. I show you what purports to be a copy of the report in your files, and ask you if it is a correct copy of that report?

Exam. Gibbons: Mr. Burns, do you have additional copies?

Mr. Burns: Yes, sir, I do, I have a few copies.

Exam. Gibbons: Do you want that marked as an exhibit?

Mr. Burns: Yes, sir.

A. That is correct.

By Mr. Burns:

Q. Now, the copy that I hand you is only the front page of the report, is it not?

A. That is correct.

Q. Now, looking at the back page of the report, is there any writing?

A. Yes, sir.

Q. Is there any writing other than printing on the back of the report?

[fol. 589] A. No, sir.

Q. So the back of the report is more or less in blank form, used by the Commission, is that correct?

A. That is correct.

Exam. Gibbons: Mr. Burns, it might be well at this point to identify these two.

Mr. Burns: I would like to identify these two papers as H-15, the North Carolina Utilities Commission Station Inspection report—

Exam. Gibbons: The North Carolina Utilities Commission Station Inspection Report will be marked for identification as H-15, and the document entitled "Inspection Requirements for Grading Purposes" will be marked as Exhibit H-16.

(Protestants' Exhibits H-15 and H-16, Witness Hinton, marked for identification.)

By Mr. Burns:

Q. I believe that you did say that this was a correct copy of the original of the report which you have with you?

A. That is correct.

Q. Calling your attention to the score, how many possible points could the station at Greensboro have scored? At the particular inspection of June, 1961?

A. 1000.

Q. How many points did the station in fact score?

A. 870.

[for 590] Q. Calling your attention to H-16, that exhibit covering the back of the report, what would a score of 870 be in terms of rating, as disclosed by the report? That was 870?

A. 870; fair.

Q. Are there any remarks appearing on the report on the front side?

A. Yes, sir.

Q. What are the remarks indicated there?

A. "A general cleaning with soap and water would help, but a coat of paint would be much better."

Q. To whom does the report indicate it is directed, so far as the Southern Railway Company is concerned?

A. Mr. B. A. Bernhardt, the agent at Greensboro, and Mr. P. C. Shu, of Greensboro.

Q. Now, I have another exhibit that I would like to have identified, the Station Inspection Report of the Commission for the station at Burlington for the month of June, 1961.

Exam. Gibbons: That may be marked as Exhibit H-17.

(Protestants' Exhibit H-17, Witness Hinton, marked for identification.)

By Mr. Burns:

Q. Now, I hand you a copy of Exhibit H-17, and ask you if this is an exact copy of the official one appearing in your files which you brought with you?

A. Yes, sir.

Q. On the original of the report for June, 1961, if you will [fol. 591] turn it over to the back, I will ask you whether there is any difference in the back of that form and the back of the form which has been identified as H-16?

A. No, sir, there is no difference.

Q. There is no writing on the back of that form, either?

A. No, sir.

Q. On that, what is the date of the report covering the Burlington station?

A. June 14, 1961.

Q. How many possible points could the station at Burlington have made at that inspection?

A. 1000.

Q. How many did it in fact make?

A. 760.

Q. On the scale on the back of H-16, would you please tell me what, where a score of 760 falls?

A. Poor.

Q. Were there any remarks made by the inspector on that report, and if so, would you please read the remarks?

A. Yes, sir. "Station is in need of a general cleaning, a coat of paint would help very much."

Q. Now, I have a report covering the station at Durham for the month of June, 1961, which I ask be identified.

Exam. Gibbons: It will be H-18.

(Protestants' Exhibit H-18, Witness Hinton, marked for [fol. 592] identification.)

By Mr. Burns:

Q. Now, would you please get the original of the report for the Durham station for the month of June, 1961, and compare it with the copy that I have handed you?

A. Yes, sir.

Q. Now, turning to the back of the original of the report, is the back of the report the same as the back of the report which has been identified as H-16?

A. Yes, sir.

Q. There is no writing on that side of the form?

A. No, sir.

Q. The copy which has been identified at H-18, is it a true and correct copy of the original that appears in your file?

A. Yes, sir.

Q. How many points could the station at Durham have scored? Under that scale, for the inspection of June, 1961?

A. 1000.

Q. How many did the station in fact score?

A. 940.

Q. Are there any remarks on the report?

A. No, sir.

Q. After receiving reports on individual stations within the State, does your office prepare a summary of the ratings or scores of the various stations?

[fol. 593] A. Yes, sir.

Q. Do you have the reports for the months of May, June, or April, May and June of 1961, before you?

A. Yes, sir.

Q. Calling your attention first to the month of April, 1961, what was the lowest station in the state, as far as rating is concerned, in April, 1961? Of all railroad passenger stations?

A. Burlington.

Q. What was the next lowest?

A. Reidsville.

Q. And what was the next lowest?

A. Durham.

Q. Calling your attention to the summary for the month of May, 1961, what was the lowest station in this state?

A. Greensboro.

Q. Was was the next lowest?

A. Durham.

Q. What was the next lowest?

A. Raleigh.

Q. What was the next lowest?

A. Burlington.

Q: Calling your attention to the summary for the month of June, 1961, what station received the lowest rating at that time?

A. Burlington.

Q. What was the next lowest?

[fol. 594] A. Greensboro.

Q. What was the next lowest?

A. Salisbury.

Q. What was the next lowest?

A. Durham.

Q. As a matter of information, are the stations at Salisbury and Reidsville also Southern Railway stations?

A. Yes, sir.

Q. Exhibits H-15 and H-17 and H-18 are the originals of reports that are made by inspectors of the Utilities Commission?

A. That's correct.

Q. Do you, of your own knowledge, know what is done with other copies of these reports?

If you don't know, say so.

A. We mail them to the personnel of the railroad.

Q. Do you in your office mail copies of the reports to the various people in the railroads, the various responsible officers of the railroad, I should say?

A. Yes, sir.

Mr. Burns: I believe that's all the questions I have of Mr. Hinton. I tender him for cross examination.

Exam. Gibbons: Cross examination is in order.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Hinton, are these reports made every month of the year?

[fol. 595] A. Yes, sir.

Q. It is a regular proposition?

A. Yes, sir.

Q. Are you in supervision of the inspector who makes these reports?

A. Not directly.

Q. Do you know whether he will—tell us how he goes about making this sort of report, does he visit the stations regularly?

A. He inspects the station and renders a report at the time he makes his inspection, and the agent at the station usually signs a copy of the report.

Q. He makes the report at the station?

A. Yes.

Q. Now, what is the purpose of your office making these reports, these inspections and these reports, and sending them to the railroad, what jurisdiction are you exercising in that respect?

Mr. Burns: The whole question of jurisdiction would be a matter of law, sir.

By Mr. Eisenhart:

Q. What is your purpose, let's put it that way.

A. We try to maintain, or would like to maintain, as nice and proper facilities as possible, so that the public—

Q. Could you give me a statutory or regulatory citation that constitutes this that you speak of?

Mr. Burns: I can give you citations from the North. [fol. 596] Carolina law, if you wish, it is the law, I will be glad to do that.

By Mr. Eisenhart:

Q. Now, looking at Exhibit H-15 for a moment, see if I understand this. Under the heading, "White Waiting Room," you have Walls and Ceiling, 15, circled, and that is apparently part of the reduction from the potential, a minus figure from the potential.

What does that mean, Walls and Ceiling, 15?

A. If you are speaking of the report in connection with Durham—

Q. That is H-15, that is the report in connection with Greensboro.

A. It appears as though the inspector deducted fifteen points due to the ceiling and walls needing cleaning.

Q. It appears; you say it appears, how does it appear to you that that is why he circled 15. against walls and ceiling?

A. Because that is what that covers.

Q. Cleaning?

A. Sir?

Q. Cleaning? That item covers cleaning, is that your testimony?

A. It covers the cleanliness of the walls and ceiling, that is correct.

Q. How about accessible drinking water, minus 25, circled, under the same heading, White Waiting Room, what would that mean, do you know what it means?

A. I can give you my interpretation of it.

Q. I asked you if you knew what it meant when he circled

25. [fol. 597] A. There was not accessible drinking water in the white waiting room.

Q. That means, does it not, that there was not accessible drinking water in the white waiting room, or he didn't find accessible drinking water at the time he was there, is that correct?

A. Yes, sir.

Q. And it could mean that the drinking water fountain was there and not operating, could it mean that?

A. It is possible.

Q. It doesn't necessarily mean that there was no drinking fountain installed, it means that he didn't find any that provided drinking water at the time he was there?

A. That's correct.

Q. I take it he did find accessible drinking water in the colored waiting room at that time, since it doesn't seem to be circled?

A. Yes, sir.

Q. After you sent the reports to the railroads, what is the next step?

A. That's it.

Q. Do you go back next month and make another inspection and another report?

A. Yes.

Q. How about on the same exhibit, White Men's Toilet

[fol. 598] Facilities; under that you have "Windows—Clean, Screened", minus 10; does that mean that either the windows were not clean, or they were not screened, either or both?

A. Well, it could be either or both.

Q. Or that a screen was there and broken, might it mean that?

A. It is possible.

Q. Now, Mr. Hinton, are you aware of a similar report which was made in connection with the Durham station, and presented in the case before the Public Utilities Commission in October of 1959?

A. I don't know which report you have reference to, here, but if it was one of these reports for 1959, a similar report, we do have them in the office.

Q. You don't know what that report showed, the one that was submitted before the Public Utilities Commission in this case in October of 1959?

A. No, sir, I can't recall.

Mr. Burns: The record shows, you can introduce the record if you want to.

By Mr. Eisenhart:

Q. You wouldn't know, then, if there has been any change in this rating since then, I take it?

A. No, sir, because I don't recall what that one was.

Q. Well, turn to your present exhibit on the Durham station. I think it is marked H-18. What is the rating at the present time for the Durham station? I have some [fol. 599] trouble reading these figures.

A. For the month of June, 1961, it showed 940.

Q. Is that, what classification is that?

A. Fair.

Q. Is that the first or second classification?

A. It is the second classification.

Q. Second from the top?

A. Yes.

Q. Mr. Hinton, would you tell me how many railroad stations were checked in the three-months' summary that you referred to?

A. Are you speaking of Southern, or all the railroads in North Carolina?

Q. All the railroads in North Carolina.

A. There were 44 made in June.

Q. 44 stations out of how many in North Carolina, do you know?

A. No, sir, I don't know the total number of stations in North Carolina.

Q. Do you know the total number of Southern Railway stations in North Carolina?

A. No, sir, I do not.

Q. Can you tell me how many Southern Railway stations were checked in June?

A. 25.

Q. So you don't check all stations every month, do you?
[fol. 600] A. We should; it is our intention to.

Q. But it doesn't actually happen?

A. Occasionally a station will be omitted.

Q. Were any instructions given to you or to your office, to make sure that you investigated and reported on certain Southern Railway stations during these three months through June, 1961?

Mr. Burns: Objection, he testified that somebody else made the inspections, not him, it would be beyond his knowledge.

Exam. Gibbons: Does the witness have any knowledge as to any specific instructions that were given to the inspectors?

The Witness: No, sir.

Exam. Gibbons: Objection sustained.

By Mr. Eisenhart:

Q. Mr. Hinton, in your capacity as assistant director of transportation, do you have any supervision over bus lines or operations?

A. So far as rates and charges are concerned.

Q. You do have?

A. Yes, sir.

Q. Would you know in the course of your duties whether

a bus line had been suspended, a bus line operation had been suspended?

A. Some of them I do, and some of them I do not.

Q. Let me ask you specifically; are you familiar with Southern Coach Company?

A. Somewhat.

[fol. 601] Q. Let me show you a paper that was introduced into evidence yesterday as Exhibit H-14, at the bottom of which purports to be a bus schedule of Southern Coach Company. Do you see at the bottom there a schedule marked 3046?

A. Yes.

Q. Do you know whether that operation has been suspended by the North Carolina Utilities Commission?

A. No, sir, this does not come under my jurisdiction, and I do not know about that.

Q. Would you recognize a ticket issued by that company?

A. I don't recall ever, I don't recall one being issued, every one, I don't know.

Q. If you saw that, would you think that you could get on that bus or that company and ride between Raleigh and Durham, if you had one of those?

A. Yes, sir, I would.

Q. Today, you could get on today and ride?

A. I am not sure about that.

Mr. Burns: The authority—for the record I would like to make a statement; the authority of Southern Coach Company to operate a through service between Raleigh and Durham has been to the Supreme Court of North Carolina, and is pending before the North Carolina Utilities Commission; the Commission held that the company has no authority to operate, and I can produce orders to that effect, if necessary; but it is a still pending proceeding, and what [fol. 602] will actually come out of it, I don't know.

Mr. Eisenhart: Mr. Burns, would you concede that you presently can go between Raleigh and Durham on the Southern Coach Company, if you purchased a ticket?

Mr. Burns: As a practical matter, you can; I will also concede that it is an illegal operation.

Mr. Eisenhart: But if you purchased a ticket, you could do that?

Mr. Burns: Yes. You can do anything. The question is whether you can do it legally.

Exam. Gibbons: Any further cross?

Mr. Burns: I have some questions I would like to ask of him.

Redirect examination.

By Mr. Burns:

Q. Since you have been asked what stations have been inspected in June, 1961, Mr. Hinton, I will show you what purports to be a copy of the list prepared by your office of inspected stations for the month of June, 1961, and ask you if this is a correct copy of the original list appearing in your files?

A. Yes, sir.

Mr. Burns: I would like this to be identified.

Exam. Gibbons: This document described as Railroad Passenger Station Ratings for June, 1961, will be identified as H-19.

Mr. Burns: H-19, sir?

[fol. 603] Exam. Gibbons: Yes, sir, H-19.

(Protestants' Exhibit H-19, Witness Hinton, marked for identification.)

By Mr. Burns:

Q. Now, you were asked about the schedule of Southern Coach Company between Durham and Raleigh. Would you please look at the copy that you are given, and tell me how long it takes to go from Durham to Raleigh by means of that schedule?

A. An hour and twenty minutes.

Q. Do you know what the distance is between Durham and Raleigh? By way of Holly Springs?

A. No, sir, I do not.

Q. Do you know what the distance is direct by the most direct highway?

A. Approximately 23 miles.

Mr. Burns: That's all the questions I have on redirect.

Mr. Eisenhart: I would like to ask one or two questions, on recross, with respect to Exhibit H-19.

Recross examination.

By Mr. Eisenhart:

Q. Mr. Hinton, does one man do all this inspecting, or are there more than one?

A. There are twelve that do this inspecting.

Q. Of these twelve, do they each do the same stations each time they inspect, or do they interchange the work they do?

A. They do the same stations each time.

[fol. 604] Q. In other words, the man that went out to inspect Greensboro station in June would be the same one who inspected it in April, and any other month, is that correct?

A. That's correct.

Q. Would he also inspect the stations of any other railroad, or would that be somebody else?

A. We have twelve inspectors, with the Utilities Commission, they are assigned specific territories, and they inspect all the stations within their territory each month.

Q. Are there twelve territories, or do you have more than one inspector per territory?

A. No, sir, they are broken down into the twelve territories.

Q. I see. Thank you.

Further redirect examination.

By Mr. Burns:

Q. Since the time of the last case, has Inspector Jesse W. Hill, to your own personal knowledge, been hired by the Utilities Commission?

A. Yes, sir.

Exam. Gibbons: How long does it take an inspector to inspect a station? Generally? I know it depends on the size and other factors, but how much time does an inspector usually put in on a station?

A. I really don't know.

Mr. Burns: Is that all the questions you have, sir?

Exam. Gibbons: Yes.

[fol. 605] Mr. Burns: I would like to ask that Exhibits H-15, 16, 17, 18, and 19 be received in evidence.

Exam. Gibbons: Exhibits H-15, 16, 17, 18, and 19 are hereby received into evidence.

(Protestants' Exhibits H-15 through H-19, Witness Hinton, received into evidence.)

Exam. Gibbons: The witness may be excused.

Mr. Burns: May I ask if he may be permitted to be excused for the rest of the hearing?

Exam. Gibbons: Yes, he may be excused.

(Witness excused.)

Mr. Burns: That's all the evidence that we have available, I believe. Can we have just one second? I believe we have one more witness we could put on before lunch.

Exam. Gibbons: All right.

Mr. Burns: We have one witness that I think can testify at this time, if Your Honor would like. I ask Mr. William L. Fayle to be sworn.

WILLIAM L. FAYLE was duly sworn and testified as follows:

Direct examination.

By Mr. Burns:

Q. Mr. Fayle, would you please state your name and address for the record?

A. I am William L. Fayle, F-a-y-l-e, address, 2840 Fairway Drive, Burlington, North Carolina.

[fol. 606] Q. What is your occupation, sir?

A. I am Director of Transportation for Burlington Industries, Incorporated.

Q. Where is your office located?

A. Burlington, North Carolina.

Q. Where are the offices of Burlington Industries located primarily?

A. Our executive offices are located in Greensboro, North Carolina. Our sales executive offices are located in New York.

Q. To your knowledge do executives and buyers, or executives of Burlington Industries and buyers of your products have occasion to go to and from Burlington to conduct their business?

A. Yes, sir.

Exam. Gibbons: Did you state what your capacity was?

The Witness: Director of Transportation.

Exam. Gibbons: Thank you.

By Mr. Burns:

Q. Just for the record, in case there is anybody here that doesn't know, approximately what size organization is Burlington Industries?

A. Let me get the current figures. Burlington operates 125 textile plants in 17 states and six foreign countries. It employs approximately 62,000 people.

Q. And I think that you said, and I may be wrong, that there were approximately 7 mills in the Burlington area?

[fol. 637] A. There are seven manufacturing plants in the Burlington area, and one central warehouse in addition to our transportation division headquarters.

Q. Of your own knowledge, do you know people connected with Burlington Industries that use Trains 13 and 16 as a mode of transportation?

A. Yes, sir, we have some executives, manufacturing executives, who use only the rail travel as required in their work between Burlington and New York, eastern points, Philadelphia, Washington, and New York.

Q. In addition to that, they—does your company make express shipments from Burlington, North Carolina?

A. Yes, sir.

Q. Do you have any idea of the volume of the shipments that you make there?

A. I checked that figure with the Railway Express office in Burlington, Mr. Coble, and the figures he gave me were

\$1,000 per week, average, on inbound collect and outbound prepaid shipments by our company. Additionally there was 40 to 50 per cent of that amount on inbound prepaid and outbound collect shipments. That would give a fairly good estimate of those revenues.

Q. In addition to the express and passenger usage, does your company have any shipments moving by rail freight?

A. Yes, sir.

[fol. 608] Q. Any of that by Southern Railway?

A. Yes, sir, from that area all of that would move via Southern Railway.

Q. Do you know why the executives of Burlington Industries from time to time use trains 13 and 16?

A. We have some who use only those trains in their travel, because of the convenience of the schedule. They can leave Burlington at a convenient hour, arriving at New York with a minimum loss of the business day, and can return from eastern points, New York and so on, back to Burlington with an early morning arrival, I believe, of about 7 a. m.

Q. And you know why the buyers would come to your mills or your plants in Burlington and use the train?

A. I would say for the same reason, for the convenience of the schedule. I would like to add a comment, if it is appropos, that we did not realize that we had as many customers, buyers, coming to Burlington on the train, or technical people, such as quality control people, from yarn suppliers, and so on, that were using the train facilities when we made our initial survey, back in the spring of 1959, and since that time these various customers and suppliers have notified our manufacturing and sales executives, because by this time they now know that there is a proposal to remove the service, and they have asked us to let the regulatory people know that the schedule is important to them. They would like to see it maintained. There are a [fol. 609] number of such people whom I cannot identify by name, unfortunately.

Q. As a matter of fact, in the proceeding before the State Commission, you did not even appear in protest, did you?

A. No, sir, in our initial service checks, we found perhaps a dozen to, let's see, 12 to 20 people, somewhere in that range, who were either regular or infrequent users of the

train schedules; but since that time, we have determined that that number must be at least trebled or quadrupled, perhaps in a number of 30 to 40 people, where we find it is to the interests of our company to protest the removal of those schedules.

Mr. Burns: Thank you, sir.

By Mr. Burns:

Q. Would you characterize the city of Burlington as an industrial center?

A. Yes, sir.

Q. Is it a substantial textile center?

A. Yes, sir, it is a hosiery manufacturing center, and to my knowledge there are some 90 or 100 hosiery manufacturing plants in Alamance County, centered around Burlington.

Q. In addition to that, are there other types of industry located there?

A. Yes, sir.

Q. Would you give us an illustration of one or two?

A. The Western Electric Works is on defense work, and [fol. 610] employs approximately 4,000 people; we have a large textile manufactory, the Kaiser Roth Company, who operate, I am not sure, but I would say three or four plants in Burlington, and perhaps six or eight in the county, and nearby points, within ten miles of Burlington.

Q. Thank you, sir. In view of what you have stated, after your check of the situation at your own company, in your own general knowledge of your area in which you live, do you have an opinion satisfactory to yourself as to whether or not the passenger trains 13 and 16 serve a substantial public convenience and need in the area in which you live?

A. I feel they definitely do.

Mr. Eisenhart: I object to that, Your Honor.

Exam. Gibbons: I know it calls for a conclusion, that is a conclusion the Commission has to decide, but I will let him express an opinion.

The Witness: I believe they do. I would go on to say that I believe as an industrial traffic man, realizing this,

to minimize the loss to the Southern Railway, we would do everything possible to encourage the use of those trains to minimize their loss, and to permit their continuance.

Mr. Burns: I believe that is all the questions we have, Mr. Examiner.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Fayle, I believe that you stated that you made a [fol. 611] survey of some sort before the proceeding before the State Commission in 1959, when at that time you did not find sufficient reason to protest?

A. Yes, sir.

Q. As a matter of fact, you notified some employee or officer of Southern Railway that you had no objection at that time?

A. Yes, sir.

Q. Did you realize at that time that Southern Railway had petitioned the State Commission for the discontinuance of these trains, and had posted notices to that effect throughout the area, when you made your survey in 1959?

A. Yes, sir, and we assisted them previously on the removal of other schedules too, and I believe four years prior to that.

Q. When did you make your second survey, the one that caused you to change your mind?

A. Subsequently to June 24, 1959, when we advised your company that our studies at that time indicated that there was little interest or use.

Q. When subsequently, Mr. Fayle, do you recall?

A. I would say in the past eight months.

Q. In the past eight months?

A. Yes, sir.

Q. Was that before or after Southern Railway petitioned to the Interstate Commerce Commission, do you know?

A. I can't answer the question, because I am not clear [fol. 612] enough on the dates, but I would think that it was prior to the petition to the Interstate Commerce Commission.

Q. At that point, Southern—did you know that Southern was operating the trains because it failed in North Carolina Courts to have them removed?

A. Yes, sir.

Q. But you did not know that it was going to petition to the Interstate Commerce Commission?

A. At that time, no.

Q. When you made the survey?

A. We presumed they would, but we did not know.

Q. Mr. Fayle, could you tell me how many of your executives regularly use 13 and 16?

A. These are manufacturing executives who personally use the service, and who have informed me that their vendors and customers use this service.

Q. Before you read that—

A. Would you like the names?

Q. I would like to find out—are these your executives?

A. Yes, sir, manufacturing executives.

Q. Burlington's executives?

A. Yes. They operate plants or divisions located in Burlington.

Q. I don't know that you understood me. My question was, are they officers of Burlington Industries?

A. Yes, sir.

[fol. 613] Q. How regular is the use of the trains by them?

A. I have one hosiery vice-president who goes to New York about once a month, up and back on the train.

Q. Has he always used the train?

A. He has always used it.

Q. He was using it back in April of 1959, then?

A. Yes, sir.

Q. Do you have anyone who makes more frequent service of the train than that?

A. Not as an employee of our company, no, sir.

Q. You spoke about express, Mr. Fayle, and you indicated that your company ships a good deal of express. Is that express handled by our, handled by REA over the road, or by motor carrier?

A. By truck, since the authority was granted in 1961, February 24, 1961. Prior to that time, by rail.

Q. We understood you to say that, as to your freight,

you shipped all by Southern Railway. I take it that you meant by that, that any freight that you had by rail is shipped by Southern Railway, because of your location, and that you did not mean to say that all the freight that is shipped out of your plant at Burlington is railroad freight, is that correct?

A. That is correct.

Q. How far is Burlington from Greensboro, Mr. Fayle?

A. 22 miles.

[fol. 614] Q. Is your plant located in the center of Burlington?

A. No, sir, our plants are located at various points in Burlington. One would be located in the center of Burlington; the others would be on the extremities, east and south of Burlington.

Q. Do you have a plant at Franklin, North Carolina?

A. Yes, sir.

Q. Do you have any travel between New York and that plant?

A. Sir, let me correct myself. I am thinking of Franklinton. You said Franklin, North Carolina. Franklin is in the mountains and to my knowledge we do not have a plant there. We have one nearby at Raven Gap, Georgia.

Q. I mean Raven Gap.

A. Yes, sir, Raven Gap.

Q. Do you have travel between New York and Raven Gap?

A. That plant belongs to a division of ours called James Lee and Sons Carpet Company, whose headquarters are at Bridgeport, Pennsylvania, or Philadelphia. There would be travel between Raven Gap and Philadelphia, yes, sir, not necessarily New York.

Q. Do you know whether there is any passenger service there?

A. There is no passenger service, the Tallulah Falls railroad has been abandoned.

Q. Do you have frequent travel between Burlington and Greensboro via automobile?

A. Yes, sir.

[fol. 615] Q. So that if a man coming to your plant from the east came down on the Southern Railway on the Winston-Salem Pullman car, for example, he could get off in

the morning, and he could be met there and taken to your plant?

A. At a very inconvenient hour, six a. m., yes, sir.

Q. Do you know that he has to get off the train at six a. m.?

A. I am not that familiar with passenger travel schedules on that arrival, but it is somewhere in that neighborhood.

Q. It wouldn't be 7 a. m.?

A. Sir?

Q. It would not be 7 a. m.?

A. I prefer to look at the schedule.

Mr. Eisenhart: I don't think it is that important, it is in the record.

The Witness: Yes.

Mr. Eisenhart: I believe that's all I have, thank you.

Exam. Gibbons: You mentioned that one executive uses the trains approximately once a month between Burlington and New York?

The Witness: Yes, sir.

Exam. Gibbons: Other executives, I take it, use it less frequently? Is that correct?

The Witness: The other executives, sales headquarters are not necessarily in New York. This man has travel confined between Burlington and New York. The others have [fol. 616] sales areas in New York, and also at Atlanta, Dallas, Chicago, and other points. I used him as an example because of the fact that we have a through car that moves to New York.

Exam. Gibbons: How many other executives other than the one you mentioned use it about once a month?

The Witness: I have about five here that I would say use it on an average of about once a month, and the majority of that travel would be east, from Washington on to New York.

Exam. Gibbons: Do you have occasion to use it yourself?

The Witness: Yes, sir, I use it myself.

Exam. Gibbons: How frequently?

The Witness: I probably don't use it that much, because I don't spend that much time in New York, I probably use it maybe twice a year.

Exam. Gibbons: How many employees are located in this area? I think you mentioned a total for the Burlington Industries, but how many are in this particular area?

The Witness: I can give you a close estimate. I would say 2500 to 3000 would be sufficiently close, if you will accept an estimate.

Exam. Gibbons: Any further questions?

Redirect examination.

By Mr. Burns:

Q. In addition to your own personnel, you have other representatives of other companies coming to see you in Burlington for purposes of purchasing your products, is [fol. 617] that not correct?

A. Yes, sir, we have the headquarters of our Burlington House Fabrics plant there, which manufactures upholstery, and drapery fabrics, and buyers from various companies who are our customers come to Burlington to look at the samples and styling. We were not aware of the fact that we had as many people coming to Burlington as apparently actually do come, and use the train in their travel, particularly women buyers.

Mr. Burns: That's all the questions I have.

Mr. Eisenhart: I have a couple.

Recross examination.

By Mr. Eisenhart:

Q. Mr. Fayle, do some of your contacts and executives use plane service?

A. Yes, sir.

Q. At Greensboro?

A. Yes, sir. We have our own company planes in addition to that, that fly to non-scheduled destination points, where we don't have through service.

Q. They are available to your executives?

A. Yes, however, some of our executives will not fly.

Q. They are available, though. How about your customers, are they made available, not necessarily your cus-

tomers, but these people that come down to do business with you?

A. Not on a broad scale; occasionally they will be made available for perhaps an important sales or styling meeting [fol. 618] or something, but not frequently.

Q. But others use the scheduled airlines?

A. Yes, sir.

Q. Mr. Fayle, one thing I want to bring up in connection with your answer to the Examiner, the information that you have given about the people who are riding the trains, and the regularity of the service other than your own use, is that what they have told you, is that what, is that how you know?

A. Yes, sir, and I know from my own personal knowledge, because some reservations are made by my secretary there in Burlington, and I know from personal knowledge, and I believe I could document it with our reservation sheet, we keep a regular reservation sheet. I did not do so before coming, but I could do so if it would be of interest.

Mr. Eisenhart: Thank you, sir.

Mr. Burns: Thank you.

Exam. Gibbons: The witness may be excused.

Mr. Burns: May he be excused for the rest of the hearing?

Exam. Gibbons: He may be excused.

[fol. 619] GEORGE HERBERT was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Mr. Herbert, I am going to ask you to pull it back far enough, not so you will be in any danger of falling, but turn partially towards the Hearing Commissioner and the Reporter, that's correct.

Will you state for the record your full name and address?

A. George R. Herbert, 1212 Arnett Avenue, Durham.

Q. What is your occupation, Mr. Herbert?

A. I am president of the Research Triangle Institute.

Q. Will you tell us where the Research Triangle Institute is located?

A. The main operations of the Research Institute are located on the Institute campus, in the middle of the Research Triangle Park on Cornwallis Road, about six miles, approximately, south of Durham.

[fol. 620] Q. And approximately how far from Raleigh, and how far from Chapel Hill?

A. These are approximations; about 16 miles from Raleigh, and about 12 miles, perhaps, from Chapel Hill.

Q. Mr. Hubert, what are the Research Triangle Institute?

A. The Research Triangle Institute is a non-profit operation, maintaining its own staff and facilities to provide scientific engineering research services to corporations, government agencies, and foundations.

Q. And are there such agencies and foundations and institutes located in the Research Triangle Park area?

A. I am afraid I will have to ask for qualification; are there other institutes similar to yours?

Q. No, sir, other organizations.

A. Other research organizations?

Q. Yes.

A. Yes, there are.

Q. Name me some of them, please.

A. The largest is the Chemstrand Research Center, which was completed toward the end of last year. The U. S. Forestry Service has a new laboratory under construction, due to be completed early next year, some time early next year.

Q. Do you know how many people are presently employed by the Chemstrand Corporation? In the Triangle Park area?

A. This would have to be an approximation, because I [fol. 621] do not have the exact numbers, it would be about 375, perhaps a little more, at the present time.

Q. Is Mr. George Watts Hill connected with the Research Triangle Institute?

A. Yes, sir; Mr. Hill is Chairman of the Institute's Board of Governors.

Q. Do you happen to know whether he as a necessity had to be out of the city for the balance of this week?

A. Yes. I saw Mr. Hill early in the week, and he told me he had to leave.

Q. Mr. Herbert, in the discharge of your duties, please state whether or not it is necessary for you to travel to and from the Research Triangle Institute to other cities and parts of the United States?

A. Yes, it is. I travel quite extensively.

Q. How frequently do you make trips to New York? And Philadelphia and Washington and that area?

A. I average probably something over, something between two and three trips north from here, at least that many, each month, and probably average at least one a month to New York. The rest of them would be to Washington.

Q. What mode of transportation do you use in your travel to New York?

A. I use both rail and air.

Q. And what differentiates between whether you use one [fol. 622] or the other, and will you explain, please, in your answer to that question when and why you use the rail transportation.

A. I would say the main reason for me using rail transportation in connection with New York trips is the important matter of timing or convenience. Of course with the time difference, it is impossible to leave here right now on an early morning flight, and be in New York for the luncheon meeting, particularly during the period of daylight saving time in other parts of the country, so that if I have a luncheon meeting, a late morning meeting in New York, I am usually much more inclined to use the train to go to New York, rather than to fly up the night before, and go and get a hotel room.

Q. Do you know, Mr. Herbert, what mode of transportation the associates of yours, or those who come to the Research Triangle area on business, use in getting to and from the Research Triangle area to northern cities?

A. There again I would have to answer that both rail and air are used by staff and by visitors.

Q. Have you yourself either made arrangements or had arrangements made for you, for the use of Trains No. 13 or 16 in such travel?

A. Those are the trains that bear the Durham car?

Q. Yes, sir.

A. Yes, I have, both for myself, while most of our travel is by reservations, during the course of this year I have [fol. 623] had occasion to make arrangements or purchase tickets for visitors to the Institute.

Q. Would it be feasible under those conditions in which you describe, in which you use the train for travel to New York, for you to travel by other modes of transportation than the use of these two trains that go through Durham, No. 13 and 16?

A. Would it be feasible?

Q. Yes, sir.

A. Well—

Q. I am not asking you if it would be possible; I am asking you about the feasibility of it.

A. The trip could not be handled in the same way, in all honesty, a person would have to, you can either go to other points and get some other type of transportation, or you can use another means of transportation, but the particular trips, we would have to get to New York either in terms of timing, of meeting there, or in terms of bulky materials which you take for presentations, they could not be handled nearly as conveniently or properly from the standpoint of timing.

Q. Did you leave Durham on the afternoon of May 28, of this year, on a trip to New York on this Southern train? From Durham to Greensboro?

A. Yes, the evening train out of Durham.

Q. Did you observe anything about the equipment, about the Pullman car, on that occasion?

[fol. 624] A. Yes, when I boarded the Pullman car in Durham, it was— I would like to explain to—

Q. Explain to His Honor just what you observed, and what you found out when you boarded the car there.

A. When I boarded the car in Durham, it was excessively hot, that would be a very modest understatement, it was like an oven, and I spoke to the Pullman conductor about it when he came through, because I thought the equipment had broken down.

Q. Go ahead and explain.

A. In asking the Pullman conductor, because I was afraid this condition was going to prevail all the way to New York, if the system had broken down, he replied to me, no, that the car system was all right, but until the train came to Raleigh, the sleeping car sat in the sun in the yards, and that unlike prior times, the car was no longer pre-cooled, as he explained it to me, a cable or an electrical connection was broken, and that he had been told, I suppose in the Raleigh yards, I don't know how, that the railroad was not going to repair it.

Mr. Eisenhart: I move that the last statement be stricken; that is hearsay on hearsay.

Mr. Bryson: That was a conductor in charge of the Pullman car?

The Witness: The pullman conductor, yes, sir.

Mr. Eisenhart: The objection still stands.

Exam. Gibbons: Strike that portion of the answer that [fol. 625] he had been told about it in the Raleigh yards.

By Mr. Bryson:

Q. I believe you said that that occurred on the 20th day of May of this year?

A. Yes, sir.

Q. Mr. Herbert, have you at any time experienced personal difficulty in attempting to get reservations on either of these particular trains to or from Durham?

A. I don't know, it is probably asking a question in return, but difficulties in terms of service, or difficulties in availability of reservations?

Q. In availability of making reservations.

A. I personally have never had any difficulty in obtaining any, difficulty from the standpoint of service, in obtaining the reservations; there have been occasions, not for

myself, but in attempting to get reservations for visitors where space was not available out of Durham.

Mr. Bryson: I believe that's all I want to ask Mr. Herbert. Just a moment, please.

May it please Your Honor, of course your ruling is adverse to us as to the full statement made by the conductor to this witness. Not being as familiar as I would like to be with the ICC rules of procedure, I want to ask if it would not be permissible for us to put into the record for the purpose of having the answer ruled upon, as to whether it would be competent or not, the answer which the witness [fol. 626] would give, although we understand that you have ruled that it would be incompetent. If it is in, it is all right; and if it isn't, if there is any question about it, for the protection of whatever rights we might have, we would like to see that it is in.

Exam. Gibbons: All of the statement is in the record, except the last sentence as to what the conductor was told by someone else; that is the only portion, his statement, I don't quite understand.

Mr. Bryson: We understand that you have ruled for that to be incompetent. In order that we might present the question of competency in our State Courts, we request to have the record show what the answer would have been, had the witness been permitted to answer.

Now, that, I think, is in the record, so that the question could be presented; but I just wanted to be sure that the record had not been expunged of that part.

Exam. Gibbons: I see. You show that certain portions of that have been stricken, but it is not physically stricken from the record.

Mr. Bryson: Yes, sir.

By Mr. Bryson:

Q. Mr. Herbert, how far does the Southern Railway right-of-way over which these particular trains in question pass, from the Research-Triangles Park area? Just approximately.

A. I am afraid I am not very qualified to answer that. [fol. 627] I believe it is about, from my office, probably,

in a straight line; it is probably in the vicinity of five miles, perhaps.

Q. I wanted to ask you about the plans and future prospects of the Research Triangle. I had intended to bring that out from Mr. Watts Hill. I don't know if you are prepared to answer on that point, or whether that is a matter for Mr. Hill himself to answer.

A. I am afraid that it would be improper for me, except on behalf of the Institute, because an answer on the other—

Q. Limiting yourself strictly to the Institute, can you tell for the record, please, what your prospects are there for future expansion of business?

A. Yes, sir, the Institute really had its first staff on March 1, 1959, the first staff other than myself. Today the Institute has 86 full-time regular permanent employees. This is exclusive of temporary field workers and others we have occasionally. Our budget forecasts for a staff of 105 at the end of this year, and between 160 and 170 at the end of 1962. I think the best way to answer part of that question, as far as the Institute's expectations, is to state that there are nine other similar research institutes in the country similar in corporate form, and similar in types of things that they do. The smallest of the other nine, all of these being older organizations, would have approximately 400 employees; the largest, something a little over 2,000 employees. The Institute is expanding for [fol. 628] a new organization at a very rapid rate, both in terms of staff and in contract research activity. We will go to something over 300 total employees and many—

Q. Mr. Herbert, where are the clients or people for whom the Institute does work, where are they located?

A. The bulk of our present activities are with Union Carbide Chemicals Company, which is headquartered in New York, a contract which has been completed with Union Carbide Nuclear Corporation, with Frankfort Arsenal—

Q. Would you give the locations?

A. They are generally south of Newark and Philadelphia and New York; we worked with Bell Telephone Laboratories, with Western Electric, Redstone Arsenal, and

one of our largest activities now is the creation of the Emil Dreyfus, Henry Dreyfus Laboratory, which is resulting from a grant derived from the Henry Dreyfus Foundation.

Q. And where is the location?

A. The location is in New York. A lot of our work, of course, is out of Washington. I mentioned mostly the non-Washington contracts.

Q. Could you give the location of Redstone Laboratory?

A. That's at Huntsville, Alabama.

Q. Please state whether or not the continued operation of these trains in question would serve any use or purpose of your Institute in its dealings and relations with these [fol. 629] institutions which you have named?

A. It is important to the Institute, yes, not with respect to all of the organizations which I named—

Q. Will you explain what you mean when you say it is important to the Institute?

A. In connection with our research projects, a great deal of travel is required; in contrast to what you would expect in a normal business. Our people in doing a research project for a company, or for a government agency, must very frequently have meetings with the client's representatives for proper execution of the work. Some of those are held in our offices in the Research Triangle Park; others are held in the company's offices, or in the company's laboratories.

Q. Does that, would the continued operation of these trains serve a convenience to those parties doing business with you in this area?

A. Very definitely, and also to our own staff doing business with people elsewhere.

Q. What would you say as to the necessity for continued operation of these trains?

Mr. Eisenhart: I object.

Exam. Gibbons: I am going to overrule the objection, as long as he restricts it to his opinion in respect to his own business.

By Mr. Bryson:

Q. Within the limitation given by the Examiner, you may [fol. 630] answer the question, Mr. Herbert.

A. My personal opinion is that the continued operation and the provision of this service is extremely important to proper functioning of our organization.

Mr. Bryson: You may examine him.

Cross examination.

By Mr. Dixon:

Q. Mr. Herbert, have you ridden these trains since May 28th?

A. No, sir.

Q. This hot condition on the Pullman car, did it ever occur prior to May 28th, as far as you know?

A. Not on the occasions that I have been on the car, no, sir.

Q. What finally happened to that car, did they ever get it cooled, or did you move to another car at Greensboro, or what?

A. No, sir, as the conductor explained to me, the car was all right, but that it was not pre-cooled before it left Raleigh, and he assured me that it would come down in temperature at some point, and I have forgotten when, because I got off the car in Greensboro, and took a walk around, but it was normally comfortable after we left Greensboro.

Q. Has there been any growth in the Institute since the hearing before the North Carolina Utilities Commission in October, 1959?

A. Yes, sir.

Q. Would you give us some idea?

[fol. 631] A. I was looking at the figures, I was trying to think what our staff was at that point, October, 1959; there has been a growth of probably, you will have to accept this as an estimate—

Q. Yes.

A. 41 or 42 to 45 people in total staff.

Q. Would you say that that growth of 40 or 42 people on the staff has made any contribution to the patronage on these trains?

A. Very definitely.

Q. They ride the trains?

A. Yes, sir.

Q. Can you give us a breakdown between, I am talking about you personally now, the number of times you ride the railroad and the number of times you fly between Raleigh, Durham and the east?

A. I can very closely, as far as New York is concerned, sir. My use of the train is primarily for New York trips, and the period, the first six months of this year I utilized that car four times in connection with going to or coming from New York, and that is a figure which I am sure of. I believe that I probably used the airlines about an equal amount. Now, on New York trips; I believe I used the train something between a third and a half of the time with respect to other trips.

Q. And the balance?

A. The balance would be various.

Q. As to Washington, how do you get to and from Washington?

[fol. 632] A. I use air to Washington.

Q. Exclusively?

A. Yes.

Q. You travel to Philadelphia?

A. I do not travel to Philadelphia. Some of our staff members do.

Q. What you said as to your own personal experience, would that be true also of these other people to whom you have referred?

A. Not to the same extent, historically, because I am very surprised to learn in connection with a trip a few weeks ago to Frankfort Arsenal, we had three men, I believe, going up, they were unaware of the existence of the car, there was some problem of transportation, I heard them talking in the hall, and suggested that they take this train, and they never heard of it. I have been here longer than most of our staff, and I had been aware of the interest

in this train, I know of it more than some of my staff members would.

Q. Are you telling me now that your staff members fly more than you do, relatively?

A. Generalizations would be very difficult, sir, and I think I would hesitate to say; all I can say is, I have checked my own personal records of my use of the air and train.

Q. I see; the Frankfort Arsenal is in Philadelphia?

A. It is in that area, yes, sir.

[fol. 633] Q. Do you or your staff also use the Seaboard Railroad out of Raleigh to get to eastern destinations?

A. Yes, sir. If I may qualify that answer, you must understand that because of our location, our people live in all three communities, Chapel Hill, Durham, and in Raleigh, and those members of our staff who live in Raleigh, I am not familiar with the schedule of the line out of Raleigh, but I think there are evening trips, if you are leaving in the early evening, you leave from the place closer to your home, so quite a few of our staff members who live in Raleigh do use whatever the service is out of Raleigh.

Q. It all depends on, I suppose, just how close they are to the nearest available mode of transportation?

A. To answer would be an opinion.

Mr. Dixon: That's all I have.

Exam. Gibbons: The witness may be excused. Call your next witness, please.

Mr. Bryant: Mr. George Cox.

GEORGE COX was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Will you please state for the record your full name and address?

A. My name is George Cox, 3205 Forestdale Avenue, Durham, North Carolina.

[fol. 634] Q. Mr. Cox, what is your occupation?

A. I am Program Director of the Ordnance Engineering Design Handbook at the Army Research Office.

Q. And where is the Army Research Office located?

A. It is located on the campus of Duke University.

Q. How long have you been connected with this organization?

A. Nine and a half years.

Q. How long during that period have you lived in Durham?

A. The same period.

Q. Will you explain for the record something of the nature of the organization, please, and what its functions are, and what its requirements are, insofar as they relate to travel?

A. May I speak solely for my own project, and not for the office as an entirety?

Q. Go ahead.

A. The Design Handbook is a major technical program of the Army Ordnance Corps; the book requires very close coordination between the office here, the office of the Chief of Ordnance in Washington, the commander, officers, and senior scientists of about 13 other organizations or, rather, ordnance installations, throughout the country; for example, Frankfort Arsenal, in Philadelphia; Pickatinny Arsenal at Dover, New Jersey; various ordnance installations; I think there are about 12 of those.

Q. Mr. Cox, please state whether or not you find it necessary to travel in the dispatch of your duties in this position [fol. 635] which you hold?

A. Yes, sir, I have to make a trip either to Washington, New York, Philadelphia, Baltimore, somewhere in that area, on the average of about once every two weeks.

Q. How far is your office located from the Southern Railway station in the city of Durham?

A. It is about a ten minutes' ride. My home is about the same distance.

Q. How often do your duties require you to make these trips which you have referred to?

A. In 1959, I made 26 trips, using the Southern Railway. In 1960, I made 25, and to date in 1961, I have made 19.

Q. In the 25 which you made in 1960, what mode of travel did you use?

A. I used almost exclusively the Southern Railway.

Q. And in the trips, the 19 trips which you have used, or made, during 1961, what mode of travel?

A. 18 by Southern Railway and one by air.

Q. Mr. Cox, do you have your choice by which mode of transportation you travel in making these trips?

A. I have a choice, but I have always found it much more convenient from the point of view of conservation of time to use the train.

Q. You have answered the question that you do have the choice, and I want you to explain now why you have [fol. 636] made the choice of the Southern. I assume that when you say the use of the Southern, you have reference to these two trains, No. 13 and 16?

A. Yes, sir.

Q. Which run out of Durham?

A. Yes, sir.

Q. Will you please explain why, for the record, the reason for the choice which you have made as to the use of the Southern Railway's two trains?

A. Since the train leaves approximately at 5:55 in the afternoon, I can stay an entire day at the office the day I leave. The train gets into Washington the next morning at 7:00; into New York another route by about 8 o'clock in the morning; therefore I am able to spend the entire day in the office and at my destination, coming and going.

Q. But what would you say as to the return trip?

A. The return trip would be almost the same, sir. The train gets in, in the morning, shortly before or after 8 o'clock, and again there is very little delay in getting from the station to work.

Q. When you say it gets in, I assume that you have reference to the station in Durham?

A. The station in Durham, yes, sir.

Q. Will you explain, if you had to take some alternative method of transportation, such as a plane or motor coach, [fol. 637] or trains out of Greensboro or Raleigh, whether that would serve your convenience to the same extent that these two trains do, and if not, explain why.

A. Certainly not to the same extent of convenience. A trip from my home to any other mode of transportation

would require the investment of additional time, which would either have to be taken off my average eight-hour day at the office, or else I would have to eat into my own time at night; for example, if I were to go from Durham to Raleigh to catch a Seaboard, I guess it is, frankly I don't know, that would require an additional effort, investment in effort, to get my car from Durham to Raleigh; we only have one car, and that would make it necessary for me to get my wife or teen-age son to drive me over and pick me up, and then drive back, and pick me up on the trip in return; the same thing would hold true, I think, for Greensboro, 54 miles from Durham; again it would take about an hour and a half to get there by motor car. I don't know what the bus schedule is, frankly, I don't particularly like to travel by bus, it is rather hot, dusty, and inconvenient. As far as I am concerned, the continued use of this, of these two trains, 13 and 16, would certainly save an awful lot of time as far as I am personally concerned. At the same time, it would alleviate my family from having, as it was, to cart me back and forth.

Q. For the record, what is the approximate distance from Durham to Raleigh?

[fol. 638] A. About 22 miles, I believe, sir.

Q. Mr. Cox, during your travels on the Southern Railway, will you please state whether or not you have at any time experienced any difficulty in getting reservations, or making reservations on these trains, these two trains in question?

A. On two occasions, I don't believe I can give you the exact dates, but I think I have them on a card in my pocket. The early part of February I had to take a trip to the North Philadelphia station to get to the Frankfort Arsenal. That trip was arranged for me approximately three days in advance. By the time I left on the 5:55 in the evening, the return reservation had not been received in Durham. I was told by the station attendant to pick the reservation up in North Philadelphia the next morning, it would be waiting at the North Philadelphia station the next morning.

I inquired when I got in about 6:30 a. m., as to whether the return reservation had been made, and I was then informed that they had received no work on it. I left Frank-

fort Arsenal about five o'clock, got back to the North Philadelphia station about five-thirty, five forty-five, and again inquired as to whether I had received my return reservation. There was no reservation there. I got on the train anyhow, in the hopes that I would be able to find some accommodations, and the conductor at that point assigned me to Roomette 10, I believe.

Q. In the Durham car?

[fol. 639] A. In the Durham car, yes, sir.

Q. Approximately how filled was that car? At that time?

A. I would say somewhere between 75 and 80 per cent.

Q. In discharging the duties of your particular office, do you need the use of these two trains?

A. Yes, sir.

Q. Mr. Cox, do you read the Durham newspapers?

A. Yes, sir.

Q. Have you at any time seen any advertisement of any kind by the Southern with reference to these two trains?

A. The advertisement, as an ad publicizing the existence?

Q. Yes.

A. No, I have not.

Q. Have you seen any notice anywhere of any proposed discontinuance of the trains?

A. Only to the extent that these hearings were publicized in the paper.

Q. You mean a news item?

A. Yes, sir.

Q. I think that's all I want to ask Mr. Cox.

Cross examination.

By Mr. Dixon:

Q. Mr. Cox, what organization are you with? You reeled it off so fast I couldn't get it.

A. With the Army Research Office in Durham.

I am Program Director for the Ordnance Engineering [fol. 640] Design Handbook. It is a special project, under the jurisdiction of the Chief of Ordnance, Department of Army.

Q. It is a branch of the United States Government?

A. Yes.

Q. Branch of the Army?

A. Yes, sir.

Q. Are you here representing the United States Government or any agency?

A. No, sir, I am not.

Q. You weren't directed to come here by any governmental official?

A. No, sir.

Q. Or army officer?

A. No, sir.

Q. You are just sort of here on your own hook?

A. Yes, sir.

Q. You said that 75 or 80 per cent of that car was occupied?

A. Yes, sir.

Q. How many people do you suppose that is?

A. About 16 to 18 people.

Q. Are you thinking of spaces?

A. I am thinking of spaces. When I got on the car, at least half of the doors to the rooms were closed, and I have observed that when the doors to the rooms are closed, they are usually occupied.

[fol. 641] And there were people sitting in a substantial number of the roomettes where the doors weren't closed.

Q. Would you accept my word that there are 16 spaces on that car?

A. I would accept that, yes, sir.

Q. And you think 75 per cent or 80 per cent of them had somebody in them?

A. Yes, sir.

Q. And some of them simply had the doors shut, so you assumed somebody was in them?

A. Yes, sir.

Mr. Dixon: Thank you very much.

Mr. Bryant: May the witness be excused?

Exam. Gibbons: The witness may be excused.

(Witness excused.)

Mr. Bryant: If it please Your Honor, I would like to call Mr. Herbert, recall him, to correct one statement, or explain one statement which he made.

Mr. Herbert, will you come back to the witness stand?

GEORGE HERBERT resumed the stand and testified further as follows:

Further redirect examination.

By Mr. Bryant:

Q. You have called my attention to one statement which you made. I intended to ask you the question, how far your office in the Research Triangle area, was, not from [fol. 642] the passenger station, but from the Southern Railway right of way; will you explain to us how close the Southern Railway right of way over which these two trains run, the route of the Southern, is to the Research Triangle area, and to your office?

A. Yes, sir. I answered the previous question in terms of distance to the passenger station. The Southern Railway right of way is part of the eastern boundary of the Research Triangle Park, at a point near my office, therefore my office is something very close to a quarter of a mile from the Southern Railway right of way.

Q. It may not be important at all, but I did want to make that correction, and let it appear in the record. Do you have any questions?

Mr. Bryant: Thank you, Mr. Herbert.

Exam. Gibbons: You may be excused.

(Witness excused.)

Mr. Bryant: Mr. Paul Gray. Mr. Greer, will you take the witness chair, please, and state your full name? I inadvertently called him Gray; it is Mr. Greer, G-r-e-e-r.

PAUL GREER was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Will you state your name and address for the record, please?

A. Paul Greer, 23 Flemington Road, Chapel Hill, North Carolina.

[fol. 643] Q. Mr. Greer, what is your occupation?

A. I am a chemical engineer.

Q. With whom are you connected, and in what capacity?

A. With the Army Research Office in Durham, as Associate Director of the Chemistry Division.

Q. How long have you been connected with the Chemistry Division of the Army Research Department?

A. Four years and six months.

Q. And that is located, I believe, at Duke University?

A. It is on the Duke University west campus.

Q. Mr. Greer, what is the nature of your work there?

A. The Division that I am Associate Director of, is concerned with sponsoring basic research projects at various universities throughout the country.

Q. Now, is there anything about the nature of your work which requires you to travel in the discharge of your duties?

A. Yes, sir, it is.

Q. Would you explain what there is about your work which requires you to travel?

A. It is necessary to keep in touch with project directors of the various programs, and also to make frequent trips to the Washington area; and the New York-Philadelphia area, and other places, for occasional meetings.

Q. On keeping in touch with the universities and programs, without going into that in detail, would you tell [fol. 644] what some of those areas are?

A. Well, with reference to this particular question, much of the business has to do with a comparison of efforts with other government agencies in the Washington area; in other words, there are such agencies as the National

Science Foundation, and the Air Force Office of Scientific Research, and the Office of Naval Research, who are also doing similar work.

We have meetings among ourselves to compare notes, and aside from that, we have frequent meetings of other technical societies such as American Chemical Society, the American Institute of Chemical Engineers, and those meetings frequently are in Washington, Philadelphia, New York, Atlantic City area.

Q. Is there any reason why you would hesitate to answer the question as to the nature of the work that they, that you are doing at Duke University?

A. No, not at all, because it is unclassified.

Q. Explain what it is, please.

A. We receive proposals from universities throughout the country, and a professor who is engaged in research may have a project that he wishes to work on, and needs some financial help. These proposals that come in unsolicited are reviewed in our office, and then subjected to further review by a specialist in the field, and then are subjected to other review, after we get their reports.

Q. And by whom are they reviewed?

[fol. 645] A. They are reviewed by technically-qualified people in our office, plus the disinterested referees of the National Academy of Sciences; then after these proposals are graded according to quality and scientific merit, they are compared with the budget that we are authorized to use to further support them, and the most meritorious proposals are then accepted.

Q. Do they have, do you at times have to submit those in person?

A. Submit?

Q. The recommendations.

A. The recommendations, of course, well, the recommendations that we get are from outside; the final decision on whether to support this proposal is made in our office; but we do have to keep in touch with other agencies working in the same field, to make sure that we are not duplicating, and to make sure that our standards are equal to theirs.

Q. How frequently in the course of your duties is it necessary for you to make trips outside of Durham?

A. I average about 15 to 18 trips a year.

Q. And where are those trips made, generally?

A. Well, most of them are made to the Washington-New York-Philadelphia-Newark-Boston area; but there are some farther away; for example, there was a joint Army-Navy-Air Force conference in Denver recently on solid [fol. 646] propellants; there was an American Chemical Society meeting in St. Louis, so they may be at any point in the country; but they tend to concentrate on the eastern seaboard.

Q. Now, on these trips would you find it necessary to make trips to the eastern seaboard, that is, on these trips you find it necessary to make to the eastern seaboard, do you have the opportunity of choosing your own method of transportation?

A. Yes, in general the answer is yes.

Q. State what method you have chosen, or methods?

A. From New York and points between here and New York, I much prefer to use train travel.

Q. And when you say train travel, what train and what route, what company?

A. It means the Southern to Washington, with connections to New York, Pennsylvania, and Boston.

Q. How far is your office from Durham to the railway passenger station in Durham?

A. I would say it is about three miles, approximately.

Q. How often have you used this Southern train in your travels?

A. I use it approximately once a month. I have used it eight times so far this year, the last on June 16th, and I am going to use it tonight.

Q. Mr. Greer, will you explain for the record, if you have the choice in mode of transportation, why you have chosen these two Southern trains as your mode of transportation?

[fol. 647] A. Because they require no diversion of time, from business or essential personal purposes. In other words, I can leave the office right after work, and be at the station in time to get on a train going north. I then

have had a full day's work in the office. I can be in Washington for a full day's work or meetings there the next day, and board the train that night, and be back here for a full day's work the following day. I don't have to reconfirm reservations that one has on planes; once I get a round-trip reservation from this end, if I do it sufficiently in advance, I do have a ticket both ways. I can relax. When I get into Washington, I don't have to call up the airlines and reconfirm that I do have space, and I don't have to leave the previous night and rustle my baggage in and out of the hotel that night and the following morning. It is just much more convenient every way.

Q. Now, if you had to make the same trips, and I ask you if you could conveniently make these trips by other modes of transportation?

A. I could do it, but conveniently, no.

Q. Have you ever seen either of these two trains, Southern trains 13 and 16, advertised in any of the Durham local newspapers?

A. No, I have never seen them advertised anywhere.

Q. Have you seen any notice or had any notice of any discontinuance of the train?

[fol. 648] A. The only thing of that sort of a definite nature, or a semi-definite nature, was that when I returned from Washington on June 16, the conductor, the Pullman conductor, when he picked up my ticket, mentioned that "This car is going to be taken out of service on July 11th," and I didn't know whether to plan on this particular trip tonight.

Shortly after that, I later heard rumors that the railroad had changed its mind, so I went ahead and ordered a ticket.

Q. When you refer to "this car" you are referring to the Southern Railway Pullman car?

A. The Southern Railway Pullman car that leaves—on the Durham-Greensboro run. It is the car that starts in New York, goes down to Greensboro, and comes on over to Raleigh.

Q. Let me ask you, what if anything do you have to say as to the quality of the service and condition of the equipment on this train?

A. Well, I would say it hasn't been uniformly of superior service nature, but as it is, I prefer it to other modes of transportation.

Q. Thank you.

Mr. Bryant: You may examine him.

Cross examination.

By Mr. Dixon:

Q. Mr. Greer, do you think the Pullman conductor who told you the car would be discontinued on July 11th was confused by reason of the fact that this hearing on our application to discontinue the trains began on July 11th?

[fol. 649] A. I don't know, I don't know whether he was confused by that or not, I don't have any idea.

Q. You said you normally made 15 to 18 trips a year to places in the east; I take it that is a recent experience?

A. That has been my average over the past four years.

Q. How is that divided between rail and air?

A. Well, up to the present day, for this year I have made eight trips to that northeastern area through the June 16th trip, and all but one of them were by train.

Q. Would you say that is typical of the last year? What is the breakdown for 1960?

A. I would say that is typical.

Q. You make one by air to seven by rail?

A. That's right.

Q. Is military air transport available to you?

A. Only on international flights.

Q. You work for an agency of the United States Government?

A. That's right.

Q. But you were not sent here by them?

A. Not at all.

Q. Just came on your own?

A. Right.

Q. Do you ever go to Raleigh to ride the Seaboard? To and from the east?

A. I rode the Seaboard south to Florida in March, but

[fol. 650] I have never ridden the Seaboard to the north-east.

Q. Between Raleigh and the north—

A. Wait, I will correct that; I rode it on one occasion when I was on my own time, but I have never ridden it on business, to the north.

Q. What is the distance from your home in Chapel Hill to the Southern station in Durham, as compared to the Seaboard station in Raleigh?

A. It is just about 11 miles from my home in Chapel Hill to the other station in Durham; and it just about is 30 miles from my home to the Seaboard station in Raleigh.

Q. It is thirty miles from Chapel Hill to Raleigh?

A. Well, because Seaboard is on the other side of Chapel Hill from—in other words, the Seaboard station is on the other side of Raleigh from my home.

Q. Mr. Greer, air schedules are available in the evening from Raleigh, from Raleigh-Durham, to New York, so that you can get up there at a decent hour, and get a good night's sleep, and have the whole following day for your business affairs, isn't that true?

A. It is true; however, one has to allow time to get to the airport at each end, the airport in New York is rather far out, and the airport at this end would take me, I would have to allow certainly an hour to get to the airport, and by the time I get into New York and out of the airport and [fol. 651] into a hotel, I feel that I have done more work than I would have if I had just gotten on a train.

Q. But that is a feasible operation, if you want to do it, isn't it?

A. Oh, yes, it is feasible, oh, yes.

Mr. Dixon: I think that is all I have. That's all we have, thank you.

Mr. Bryant: Thank you.

Exam. Gibbons: You are excused.

(Witness excused.)

Mr. Bryant: Dr. Jorgensen.

WILHELM JORGENSEN was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. You are Dr. Jorgensen; would you please state your name and address for the record?

A. Wilhelm Jorgensen, 1111 North Duke Street, Durham, North Carolina.

Q. And what, Doctor, is your occupation?

A. I am a research physicist.

Q. With whom are you connected?

A. I am with the Army Research Office in Durham.

Q. How long have you been a research physicist?

A. Since 1937. I got out of the University, I got my degree in '37.

-[fol. 652] Q. From what university?

A. From the University of Washington, Seattle.

Q. With what organization are you connected at the present time, Doctor?

A. With the Army Research Office in Durham.

Q. And how long have you been connected with that organization?

A. In terms of its previous name, Office of Ordnance Research, I have been with them a little over four years.

Q. Have you lived in Durham during that period?

A. Yes, sir.

Q. Now, Doctor, would you explain the nature of your work, and particularly with reference to whether the work which you do requires you to travel any? I want you to explain first if your work does require you to travel.

A. Yes.

Q. Now, will you please answer as to the nature of your work, and what about it necessitates travel on your part?

A. The nature of my work varies somewhat from time to time, and over the years, but essentially in my capacity I evaluate research effort, and have been used in a consultant capacity with the Army. Prior to my coming here I was with the Chief of Research and Development for the

office Chief of Ordnance; and I worked in the capacity of advising on fire control, radar, and electronics, and supervising ordnance material development programs.

[fol. 653] Since I have been here, my work has varied over toward the basic research phase, but I am still used in a consultant capacity on various committees representing the Army on such things as the American Ordnance Association in their fire control efforts and their committees, Guided Missile Committee and the like, and these require that I occasionally travel to places between New York and Washington and various parts of the country.

When I travel to Washington or to places between there and New York, I almost invariably prefer the railroad, using the Southern facilities out of Durham. I have traveled quite a good deal by air as well, and I might say that my choice of air is somewhat controlled by the requirement for travel outside of Washington; in other words, if it is an air ~~travel~~ out of Washington, and it requires an air connection, I quite often take, go by air from Durham; but if I terminate my trip to some place between Washington and New York, I very much prefer to use rail travel out of Durham.

Q. Will you explain the last remark which you made, concerning reasons why you prefer rail travel outside of Durham for places between Washington and New York, over the use of the planes?

A. Predominantly because I can get on at night, I can spend a good night on the train, I can get to my destination in time for the business day following, without worry- [fol. 654] ing about getting hotel reservations for the night, particularly if it is a one-day affair, I can make my connections up and back without any extra inconvenience, and even if I stay over, I still prefer the rail, because I have yet to miss a significant conference or meeting because of my rail travel, whereas the only two times I tried air into New York, I am not sure it is the only two times, but I can certainly remember two successive times when I flew into New York, and flew around on top of New York and failed to make my meetings.

Q. On account of weather conditions or other plane conditions?

A. Yes, sir.

Q. How often do you use these Southern trains 13 or 16 out of Durham?

A. I didn't actually check this record myself, but I was told that I had 15 trips within the last year, and I have used it off and on for the last eleven or twelve years, and I might preface that by stating that before I came here, I was chief of the fire control section of the Research and Development, and as such I was associated with the fire control work that was being carried on here in Burlington.

Q. Dr. Jorgensen, do you have the opportunity of choosing your own mode of transportation?

A. Yes, sir.

Q. Please state whether or not you have appeared here today in your private capacity, or individual capacity?

[fol. 655] A. Yes, sir, I am on leave right now from my office.

Q. I would like to ask you this question; in the discharge of your duties as you have described them to be, and in the necessity for travelling, please state whether or not you could conveniently use any other mode of transportation rather than the one which you have described that you do use?

A. I have used other types of transportation, I have travelled quite a good deal in the last four years; I have even driven to Washington; but it is a tremendous inconvenience, it takes a tremendous amount of your time, and I did it only because of the fact that the other connections conflicted. There is no question about the fact that air travel has its place; on the other hand, there is a certain break into your day's work, and there is also the problem of not being sure that you will arrive at your destination when you want to be there.

Q. Dr. Jorgensen, would the removal of these two trains in the Southern Railway System work any inconvenience to you in your travel necessities?

A. Yes, sir, I feel it would very well, very much.

Mr. Bryant: I think that is all I want to ask of the doctor.

Cross examination.

By Mr. Dixon:

Q. Doctor, I am not sure that I understand the destinations to which you travel. I think I heard you say Washington and New York?

[fol. 656] A. Yes, sir, I travelled predominantly to Washington in these last four years, I travelled predominantly this way in the years prior to that, stopping at Burlington; I have had a few trips to New York, just a moderate number, and there I think it is a tremendous advantage.

Q. A tremendous advantage by rail?

A. Yes, sir.

Q. You said you had 15 railroad trips in the last year?

A. Yes, sir.

Q. Were they all to Washington?

A. I didn't really check them, but I don't think so. If I am not mistaken, I think within the last year I had one trip at least to New York and back. I can also, I am not a hundred per cent sure, but I also made a trip to Pickatinny Arsenal. I took a train to Newark, and transferred to Pickatinny in New Jersey, and then came back.

Q. During the same period, that is, the last year, how many trips by air have you made?

A. I don't have a count on those, but most of these air trips were trips to places like El Paso, Texas; Los Angeles; and the likes of that; where the trips were in continuation from here, I would have to hazard a guess, but I don't think I made more than five or six trips by air to Washington as such.

Q. Anywhere else, New York, for example?

A. I don't remember any trips by air to New York from here.

[fol. 657] Q. When you arrive by train from Durham to Washington, what do you do on the train's arrival in Washington?

A. I generally stay on the train.

Q. What?

A. I get the car that stops at Washington, if I at all possibly can, one or two occasions I was not able to get

that, and had to get off the car early; but I generally stay on the car until about 7 o'clock, and then get off and get breakfast.

Q. In other words, Doctor, you ride over to Greensboro—

A. On the train. I get on the train in Durham.

Q. You get on the train in Durham, ride over to Greensboro, and then you get off the train and get on another car that lays over in Washington?

A. That is predominantly so, when I go to Washington. On one or two occasions I have taken the car from Durham and then had to get off in Washington about four-thirty or five o'clock in the morning.

Q. Are you familiar with the airline schedules from Raleigh-Durham to Washington?

A. Reasonably so.

Q. Well, the timetable I am looking at shows 8 daily flights, and I notice there is one leaving at 6:15 p. m., and that is about the time the train leaves.

A. Yes.

Q. Not far from it. And this plane would get you in [fol. 658] there at 8:33 p. m. Does that sound about right? From here to Washington?

A. Yes.

Q. It takes about an hour and twenty minutes, something like that?

A. Yes.

Q. And then you could go to a hotel and bed down for the night, and get up the following morning all refreshed and ready for a full day's business?

And after completing your business, you could jump on a plane up there in the evening, and be home in an hour and twenty minutes. What is wrong with that?

A. I just don't like it. You have to get reservations in the first place, the problem of getting reservations is one thing that you run up against; the other one is that there is a certain amount of inconvenience to this; I prefer to ride the train.

Q. Well, there is a certain amount of inconvenience on the train in your case, because you have to get off the Durham Pullman at Greensboro, and probably shift around

there, and maybe that's where you eat your dinner; do you eat your dinner there at Greensboro?

A. I generally do.

Q. Uptown or somewhere?

A. Generally I take off away from the station, or eat on [fol. 659] the train.

Q. Then you have to move into another car, and if you don't do that, if you ride that Durham-New York car, you have to get off around four o'clock in the morning?

A. I agree to that.

Q. That is inconvenient, too, but you think that is less inconvenient than the airline?

A. Yes, sir.

Mr. Dixon: Yes, sir, thank you, that's all I have.

Redirect examination.

By Mr. Bryant:

Q. When you eat on the train, do you take a picnic basket with you? Or is there diner service on the train?

A. There was one train that had dining service on it.

Q. You mean after you left Greensboro?

A. Yes, sir.

Q. No dining service on the train from Durham to Greensboro?

A. No, sir.

Q. And none at the Greensboro station?

A. No, there is none there, either.

Exam. Gibbons: Doctor, did you identify yourself as being a Government employee?

The Witness: Yes, sir, I am a Government employee.

Mr. Dixon: Mr. Examiner, I think he testified he came on his own, and was not called by a Government agency. [fol. 660] Is that right?

Mr. Bryant: He did so testify.

Mr. Dixon: That's what I thought.

Exam. Gibbons: The witness may be excused.

We will take a brief recess at this point; we will take a five-minute recess.

(Witness excused.)

(Short recess.)

Exam. Gibbons: Back on the record.

Mr. Bryant: Dr. Sherwood Githens.

SHERWOOD GITHENS was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Will you please give your name and address for the record?

A. Sherwood Githens, 4427 Chapel Hill Road, Durham.

Q. Dr. Githens, what is your occupation?

A. I am a physicist.

Q. And with whom are you connected?

A. The Army Research Office in Durham.

Q. Are you here today in your individual capacity, or as a representative of the Army Research Department?

A. In my individual capacity.

Q. Where is your office located?

A. On the Duke University campus.

[fol. 661] Q. That is of course in Durham; and how far is your office from the Southern passenger station in Durham?

A. It is a little over a mile; I think, from the office.

Q. How long does it take to get from your office to the passenger station by automobile?

A. Roughly ten minutes.

Q. How long have you lived in Durham?

A. Nine years.

Q. How long have you been connected with the Department of Ordnance Research?

A. The same time, nine years.

Q. Will you tell for the record, please, the nature of your duties and particularly as to whether or not your duties require you to do any traveling; if so, explain the nature of the required travel.

A. My duties as a physicist are entirely administrative in nature, and during the first six years of the nine-year

period that I cited, I was in the Physics Division of our office, which principally is engaged in reviewing proposals made by University professors all over the United States for research which they would like to do at Army expense; and to carry out all the acts subsequent to reviewing these proposals, through to the point of financing, monitoring them, and terminating them at the end of each project; in the last three years, my work has changed somewhat, so that in the last three years I have been more directly concerned with the research carried out within the eleven or twelve research establishments of the Ordnance Corps of the Army, these being located principally on the eastern seaboard between Boston and Washington.

Q. As I understand it, these research projects are diffused in different sections of the country?

A. The University ones are, all over the United States. The Army projects that I am concerned with, while they are scattered, in addition to being on the eastern seaboard we do have arsenals in Detroit, Rock Island, Huntsville, White Sands, and so forth.

Q. Where is the head of the Army Ordnance Corps?

A. The Pentagon.

Q. In Washington?

A. In Washington.

Q. Do reports have to be made by you and others in the Ordnance Corps to the Pentagon in Washington?

A. Yes. I need to report and go for conferences in Washington with some frequency.

Q. And all the conferences and some of the reports which you make require your presence there?

A. Yes.

Q. In the Washington area?

A. Yes.

Q. Do your duties—strike that question. Does the discharge of your duties require you to visit points other than Washington on the eastern seaboard?

A. Yes, sir. Aberdeen, Philadelphia, Frankfort Arsenal, Pickatinny, which is not far from Newark, and then of course we also go to Springfield and Watertown, which is—

Q. Dr. Githens, do you have the determination of your mode of transportation when you visit these places?

A. It is our responsibility and our right to choose the best method to suit both our interests and those of the Government.

Q. And the determination of your mode of transportation, what mode of transportation have you chosen? In your necessary visits to these cities on the eastern seaboard, to and from Durham?

A. For some years now, I have chosen to use the train whenever possible, whenever there was a train at the right time, specifically these two trains that are under discussion, those being the only two that are really convenient to my use.

Q. These two trains to which you refer are No. 13, which leaves Durham in the late afternoon, at 5:55, I believe, going to Greensboro, and No. 16, which comes into Durham from Greensboro at approximately 7:30 in the morning; is that correct?

A. 7:55; I stand corrected on that.

Q. Is there any other rail passenger service in or out of Durham?

A. No passenger service.

[fol. 664] Q. Other than these two Southern trains, Nos. 13 and 16?

A. That is right. There are six railroad companies, but only one that carries passengers.

Q. If these two trains were eliminated, the City of Durham would be completely without any rail passenger service?

A. That's right.

Q. Well, will you explain for the record why you have chosen these two Southern trains as your mode, your most frequent mode, of transportation in and out of Durham?

A. The reasons are several, and they are interlocked with each other. Of course, the principal reason is that this service is the most economical from the standpoint of conservation of working time; another reason is that the relative reliability of the service; only once has a train let me down with respect to arriving at the other end in time for a meeting; only once in all these years, and that was because of a blizzard; everything was stopped.

Q. And—

A. (Continuing) Also, whereas in my earlier years I did fly fairly frequently between Washington and Durham, and between New York and Durham, and so on, the service has deteriorated in several respects; that is, the air service.

Q. Explain what you mean by that statement.

A. The northbound flights out of Raleigh-Durham are, on the several occasions that I have used them on a longer [fol. 665] distance flight, I have been reasonably on time; southbound, however, particularly out of Washington, we run into delays, and I have on several occasions several years back sat in the airport for indeterminable times, and the schedule has been changed so that whereas seven or eight or nine years ago there were three or four flights at very convenient times, in the early evening, from Washington to Raleigh, the flights are not now quite so convenient, and in addition to that I find that being cooped up in an airplane with a blast of air blowing in your face in order to have fresh air, unable to move around for indeterminable periods of time, seemingly, is very annoying, plus all the transfers that one has to make, baggage and so-forth, and I just find in addition that in regard to convenience and time-saving, I much prefer to get on the train within a few miles of my home, and get off the train there, and be able to have no worries, once I have my tickets and my reservations; I am all set.

Q. Do you find by taking the Southern train out of Durham in the late afternoon that you can get to Washington or New York in time to transact a full day's business?

A. Yes, it is easy to get to the Pentagon by eight or eight-thirty, or to New York by approximately the same time, not in the summertime, of course, because of daylight saving time interfering to some degree; but one can make his appointments with reasonable earliness at the other end.

[fol. 666] Q. Do you also find that it will be possible at the end of your business day, either in New York or Washington, or some of the arsenals, to return to Durham in time for a full day's work by the use of Train No. 16?

A. Yes. Many times I have come back at night and gone directly to the office in the morning, without going home, and go right straight to work, and work all day long, and go home that night.

Q. Doctor, have you made any observations with regard to the type of service offered to the railway, that is, by the railway, the Southern Railway, on these two trains, Nos. 13 and 16?

A. In general, I am happy with the service, I don't want it discontinued, and I don't want to make any complaints which would be interpreted to mean that we didn't want the service; it is just the other way around; I do want it; but there have been occasionally some thing happening which were a little aggravating. On two occasions in the last month or two, I got on the train at the Durham station and found the car very hot as the result of not having been pre-cooled, and one of those occasions, the lights wouldn't go on until after the train pulled out of the station; in other words, the battery apparently was so flat that it took the generator to revive the lighting system.

There are other little inconveniences, but nothing serious; as far as coming from Washington southbound, in order to get an extra half-hour's sleep, I have been following the practice of walking out of the end of the track on which [fol. 667] the New York train comes in, and of late the Pennsylvania Railroad has been running, particularly on Friday nights, so many day coaches on that train that you have to get on a day coach and walk through one or two day coaches until you can get out to where the sleepers are, they are way out on the switches; the cars and trains, I find, are very long nowadays. Last time I went into Philadelphia in the morning, there were 25 Pullmans on the train.

The last time I came down from Washington, there were about 22 cars on the train, and one Pullman, the Southern Pullman, was on the tail end, and when we got to Greensboro, we had about something like 22 or 23 cars on the train then; by the time the Peach Queen pulled out southbound, and we were ready to come over here to Durham, there were 21 cars on that train; so they are running very long trains. It didn't hurt me any, but when the 25-car train went northbound out of Washington, the locomotive engineer had to make two stops at several stations in order to let people get off at the platform.

Q. In spite of all that, however, you say that you still find the use of this train much more convenient and preferable to any other mode of transportation that you could choose?

A. Absolutely.

Q. Dr. Githens, some question has been raised about the question of whether there is any difficulty in obtaining reservations on Trains 13 and 16. Do you know anything [fol. 668] of your own personal observation about that, and if so, will you tell us?

A. As far as my own travelling is concerned, I think I have been fortunate enough to have been able to plan my trips sufficiently in advance so that I personally have usually had a return reservation before I left Durham. There have been one or two occasions when the ticket agent sent a note out to the office, and said, "Please stop by the desk when you come down to go, and I will give you the space then," and I have always gotten it then at the last minute, just before leaving the station.

I personally have had no trouble of that sort. Now, other people have reported to me that they have, but that would be hearsay.

Q. Do you know of your own knowledge whether there has been any failure to disseminate information in New York and Philadelphia as to the availability of a Pullman car from those points to Durham?

A. A year or two ago, I was waiting for the train in the 30th Street Station in Philadelphia, and I noticed at that time that over the ticket seller's desk there are some illuminated signs with little lights around them, which describe the Pullman accommodations to the various places and the space available on different dates, I think that's roughly what these signs are, to various cities. I took particular notice to see if the Raleigh-Durham car was on that board, and I didn't see it there.

[fol. 669] Q. Dr. Githens, how often do you ride Trains 13 or 16?

A. In the last three years I have averaged about twenty trips per year.

Q. Dr. Githens, do you read the Durham papers?

A. Yes, we subscribe to them, and we read them.

Q. Have you seen any advertisements in the Durham paper by the Southern Railway Company about these trains?

A. One. I have it with me.

Q. You have that with you?

A. Yes.

Here it is. You see the date is on the back.

Q. What is the date of this, please?

A. It came out on the 8th of January of 1960, that is a year and a half ago.

Q. Is this statement with reference to the change in the departure time of Train No. 13 from Durham?

A. Yes. It states that a new arrival time in New York is 8 o'clock, and a departure time from Durham is 5:55.

Q. And you say that is the only one that you have seen in the Durham paper with reference to this train?

A. With reference to passenger service.

Q. Have you other advertisements with reference to the Southern Railway System which appeared in the Durham paper?

A. Yes, sir, there have been a number of advertisements by the Southern Railway in our paper, and I have two of them here.

[fol. 670] Q. Have you; one of them, I believe, is in the issue of Thursday, May 18, 1961?

A. Yes, that's right.

Q. Was there also in that same edition of the paper an advertisement by Eastern Airlines?

A. There was, sir.

Q. Do you have both of those with you here?

A. Yes, sir. That is on a different date.

Q. What is this advertisement here?

A. This is another Southern Railway advertisement, and unfortunately I do not know the date, but it was a different time than this.

Q. Do you know approximately when it was?

A. Some time in the last two or three years.

Q. Can you be more definite than that?

A. Well, I found it in my file a few days ago, and I note, I know that I put it there some time in the last two years.

Q. Now do either of these two advertisements, one

which you say you do not know the date of, and the other, the Southern Railway System advertisement in the issue of May 18, 1961, do either of those mention any passenger service whatsoever?

A. Not a word.

Q. I would like to ask you to mark as identified—

The Witness: I don't believe we described this one.

By Mr. Bryant:

Q. I ask you to refer to the Eastern advertisement which [fol. 671] appeared in the same edition, May 18, 1961, and ask you if that makes any reference to passenger service?

A. It is entirely about passenger service, and it says, "New Things are Happening at Eastern Air Lines, How we Took the 'Wait out of Baggage'", and so forth.

Q. And that does make reference, you say, to passengers?

A. Yes.

Mr. Eisenhart: May I look at this?

Mr. Bryant: Certainly, Mr. Eisenhart.

By Mr. Bryant:

Q. What is the comparative size of the first advertisement with reference to the change in the hour of departure of the train, as compared to the other two advertisements inserted by the Southern Railway, which you say make no reference to passengers?

A. One is about six times bigger than the other.

Q. Give us the approximate dimensions, if you could.

A. The change of time advertisement is about 3½ by 5 inches; the other one is about 11 by 15, in round figures.

Q. That is the one in the issue of May 18, 1961?

A. And likewise the other one.

Q. One is unidentified as to date, and is approximately the same size?

A. Exactly.

Q. Would you say as to the size of the Eastern Air Lines advertisement in the issue of May 18, 1961?

[fol. 672] A. It is identical in size with the Southern ad.

Q. I would like, if Your Honor please, to ask that these four advertisements which the witness has referred to, be marked as identified, sir. You have seen these.

Mr. Eisenhart: Mr. Examiner, may I ask, I assume that Mr. Bryant proposes to offer them into evidence at some time?

Mr. Bryant: I do.

Mr. Eisenhart: I have no objection to their being offered into evidence, providing we have some sort of a copy of them, and I only request that because of the need for having a complete file, if we write a brief, or if we get into Court, and so forth. Undoubtedly if we knew which they were; we would be able to find a copy; but I think that we are entitled to a copy.

Mr. Bryant: I will agree to furnish Mr. Eisenhart a copy.

Exam. Gibbons: Would you indicate to the Reporter which ones—

Mr. Bryant: The one I propose to offer first is the one dated January 8, 1960, making reference to the departure time of train No. 16, as being 5:55, and that will be assigned H-20.

Exam. Gibbons: H-20.

Mr. Bryant: The second which I desire to offer is what has not been identified as to date, and entitled "Working Together for the South's Continued Progress". I assume that will be H-21.

Exam. Gibbons: H-21.

[fol. 673] Mr. Bryant: The third one is identified as being contained in the issue of Thursday, May 18, 1961, and bears a notation, "Highlights of 1960, Southern Railway System", and that I assume will be H-22.

Exam. Gibbons: H-22.

Mr. Bryant: And the fourth one is the Eastern Air Lines advertisement in the issue of May 18, 1961, which will be, I assume, H-23.

Exam. Gibbons: That may be marked as H-23. I am just a little curious as to why you wanted the Eastern Air Lines advertisement a part of the record in this case?

(Protestants' Exhibits H-20 through H-23, Witness Githens, marked for identification.)

Mr. Bryant: May I be heard on that for a moment, sir?

Mr. Burns: I think these are put in more at my request than Mr. Bryant's request. The reason I want that in there is to show that Eastern Air Lines is actively competing, or trying to compete with anybody for passenger service. Southern Railway is advertising its freight business, and not its passenger business; and that the two articles speak for themselves in showing who is going after the passengers.

Exam. Gibbons: Are you going to furnish us with photostats of those exhibits?

Mr. Bryant: Yes, Your Honor.

Mr. Burns: If we can take these out of the file long [fol. 674] enough to have copies made.

Exam. Gibbons: How soon could that be done? Could that be done by tomorrow? Tomorrow noon?

Mr. Bryant: Yes, sir, I think so.

Mr. Burns: We will have them before we recess.

Exam. Gibbons: I don't know how many copies are necessary for all of the parties, but we would want one for our official record, and I would want one for my personal files, and one for the railroad, or whatever the other parties want.

Mr. Bryant: We will file the original and two photostatic copies for the Court, and one photostatic copy for the Southern.

Exam. Gibbons: We only need one for the official record.

Mr. Bryant: Well, the original, one photostat for the Court, and one for the Southern.

Dr. Githens, I desire to ask you this question; have you any further testimony with reference to either the convenience, your convenience, in the discharge of your duties, or the necessity in the discharge of your duties, for the continued operations of Trains No. 13 and 16?

A. To maximize my ability to discharge my duties, these trains are really valuable, and I would be inconvenienced if they were not available.

Mr. Bryant: You may examine.

Cross examination.

By Mr. Dixon:

Q. Doctor, I don't know whether Mr. Bryant asked you if [fol. 675] you were with a Government agency, and whether you had been sent here by the agency or whether you are on your own; could you clear me up on that?

A. I do work for the Government, but I am here entirely on my own.

Q. You said in the past three years that you had made 20 trips over the Southern per year. Were they round trips or one-way trips?

A. One way; I mean the total of three years tallies up to about sixty one-way trips.

Q. So this is actually, when you said twenty trips per year, that meant ten round trips per year?

A. There have been occasions, you see, the reason why I did it that way, there were occasions when I combined a trip to Washington with trips to some other place, and make a two or three day run, and might use air in one direction, because obviously for great distances the air is the logical thing to use, if you are going to Chicago for example.

Q. It is either 10 round trips or 20 single-way trips per year?

A. Average.

Q. Does your travel to Washington predominate?

A. In the last two years it has, but previously it did not, because of the change of the nature of my duties.

Q. Just roughly, what percentage would be the Wash- [fol. 676] ington travel of the total?

A. Again, as I say, I would have to estimate, and it would be only in the last year or two, because my duties have gradually swung in the direction of needing to go to the Pentagon to a greater degree. I would say that in the last year, for example, probably three-fourths of my trips have been to Washington, and the other fourth have been other places along the eastern seaboard.

Q. Now, in getting to Washington on 13, do you ride the Pullman car over to Greensboro, or the coach?

A. I ride the Pullman to Greensboro, and I have in the last year been riding Car 30, which was discontinued, I understand, into Washington.

Q. Is that the car that stopped in Washington?

A. Yes.

Q. And you don't know what your situation is going to be in the future as to that?

A. Since Car 30, do you mean with respect to my duties, or travel?

Q. How you are going to get there.

A. I will have to quote hearsay, I mean I have heard in the last couple of days that there is a sleeper in the Crescent which detaches in Washington, and that it will be available; however, I am keeping my fingers crossed, to be perfectly honest with you, because we tried to use L-28 three [fol. 677] or four years ago, when Car 9, the old antique that used to run until last June out of Greensboro, we tried on a number of occasions to get reservations on L-28, which terminates in Washington, or at least it has been, I don't know how it is right now, because I haven't checked the schedule in the last few weeks; but we used to have trouble getting space in advance, even though we requested it several days in advance on L-28; I think that matter fortunately was very nicely taken care of two years ago after the previous hearing, because an arrangement was made so that between that time and the change that was made from Car 9 to Car 30, we were able with no trouble at all to get space on L-28 most of the time in advance, by reservation.

Q. And by transferring over from—

A. Coming back, though, we used this Car 34, the New York car.

Q. When you saw that the Raleigh-Durham car was not listed on the board in the 30th Street Station in Philadelphia, did you say anything to any of them about it, or ask them why it wasn't listed?

A. No.

Q. You did not?

A. No, I didn't make any comment.

Q. That was a board for public information, didn't you say, over the windows?

A. Yes, sir, they have a very tricky arrangement over [fol. 678] the windows for the general public to look at. This is a semi-circular place with a whole bunch of ticket agents in it, and I am referring to the signs that are, oh, ten feet off the ground, and illuminated with little lights; I don't remember the exact details, but that is essentially it. It is a form of advertisement of the available space in the future on various Pullman cars.

Q. How long has it been since you travelled to Washington by air?

A. Well, I went to Madison, Wisconsin; let me think a second; on my Madison trip I went to Greensboro, and up by air, it has been a long time, it has been months since I have gone into Washington by air; I don't know, let me think a second. I make so many trips, it is hard to remember, but I believe it has been three or four months anyway since I have gone to Washington by air; I have gone by air to other places in the last few months.

Q. How does your air travel compare in volume with your rail travel?

A. Dollarwise?

Q. No, I was thinking of trip-wise.

A. It is my, it is minor right now, because you see my duties in the last year or two, as I have said, are concentrated, preponderantly, at these ordnance arsenals which are readily available by rail, as long as these trains continue to run.

[fol. 679] Q. Do you travel on per diem?

A. Yes, sir.

Q. Does that have any bearing on the fact that you like the railroad in preference to the air lines?

A. No, sir, as a matter of fact, my per diem is less when in transit than it is on the other end; it is \$9 versus \$12.

Q. It is less when you travel by rail than by air, too, isn't it, or at least, you have less out of pocket when you travel by rail than air?

A. There are certain special cases here, now, wait a minute; the quarter day that you are in transit, according to the present Governmental travel regulations, the quarter day that you are, in transit, or fractions thereof, you receive one-fourth of \$9; and for the number of quarter days

that you are in residence, at your destination, on business, you receive one-fourth of \$12; for each quarter day while there; so if you do travel by train it takes a little bit longer, just as I say, your per diem is scaled down somewhat.

Q. And you are out of pocket less, your out-of-pocket is also scaled down too, isn't it?

A. Sir, it doesn't make much difference, really, there is no material difference; you say out-of-pocket loss?

Q. Yes, your extra expense that you are put to, as compared to what you get back from the United States Government. It is my understanding, in fact it is rather notorious [fol. 680] around Washington, that the present per diem rates are not adequate.

A. I see what you mean.

Q. Assuming for the purpose of the question that the present per diem rates are not adequate, and I wish that were otherwise, you incur an out-of-pocket expense, along with a lot of other government people, when you travel; now, having those facts in mind, if you left Raleigh-Durham for Washington on the 6:15 p. m. flight, you would get up there at 8:33 p. m., you would go to a hotel and rent a room. The following morning, you would have your breakfast, and work all day, have your lunch, your dinner, and you would fly back that night; you would need a hotel; that is important; if you went on the train, your two nights' hotel would be included in your transportation, is that not so?

A. The berth price is included with the first class fare, that is correct.

Q. So actually, doesn't that help you out on the per diem situation?

A. Well, yes, it does, in that respect; from the standpoint of the Government, however, there isn't much difference made; I mean to say that you have other expenses if you travel by air, such as limousine and that sort of thing, so really it doesn't make too much difference from one point of view, but it does make a little difference for the traveller.

This of course applies particularly on a very short trip. [fol. 681] Q. On your Washington trip, is what I had in mind.

A. If one goes on a trip of longer duration, then things even up more.

Q. That would be generally true, though, with respect to New York travel, would it not?

A. Essentially the same thing would apply, the same along the line between Washington and New York; that's correct.

Q. Doctor, are you associated with Colonel Leist or Dr. Leist; no, it is Colonel Leist? He testified in the hearing before the North Carolina Utilities Commission?

A. Yes.

Q. Where is he now?

A. In the Pentagon.

Q. How long has he been there?

A. I think he was transferred there last, approximately the first of August of the last year. He has been there now eleven or twelve months.

Q. Does he have anything to do with your kind of work in Durham?

A. Very much so, though at the moment our office is no longer associated with him directly.

[fol. 682] GEORGE PARKS was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Mr. Parks, will you state your address and name for the record, please?

A. My name is George Parks, 2710 Stuart Drive, Durham, North Carolina.

Q. Mr. Parks, what is your occupation?

A. I am an executive.

Q. With what company?

A. Golden Belt Manufacturing Company.

Q. What is that, please?

A. It is a totally-owned subsidiary of the American

Tobacco Company, which makes cotton cloth, cloth bags, prints cigarette labels and cartons.

Q. How long have you been with the Golden Belt Manufacturing Company?

A. Approximately 24 years.

Q. What is your capacity with the Golden Belt, what particular type of work do you do?

A. My title is president, and I have all the duties and responsibilities implied by that title.

Q. Are you connected with the Durham Chamber of Commerce in any way?

A. I am a member of the Board of Directors of the Chamber of Commerce.

Q. Are you a member or chairman of any committee of the Durham Chamber of Commerce?

A. I am chairman of the committee in connection with Trains 13 and 16.

Q. I ask you whether or not at my request you have prepared or had prepared a statement with reference to the City of Durham for the Chamber of Commerce, with reference to these trains?

A. I have prepared such information.

Q. And do you have that with you?

A. Yes, sir.

Mr. Bryant: If Your Honor please, I do not have additional copies of this. I would like to ask you, please, if you would read the statement which you have prepared.

A. Durham, North Carolina, is located in the central portion of North Carolina, approximately in the center of the South Atlantic states, an equal distance between Atlanta and New York. Durham is 125 miles east of the Blue Ridge Mountains, and 125 miles west of the Atlantic seaboard. Durham is the only city in Durham County.

Durham has an area of 21,997 square miles, and the 1960 census indicated a population of 78,302. The metropolitan population of Durham is 111,995. Durham is the 5th largest city in North Carolina, and has enjoyed a constant growth since 1900.

Durham has over 135 industries which manufacture cigarettes, smoking tobacco, sheets and pillow cases, proprietary

medicines, hosiery, flour, corrugated fiberboard containers, wooden boxes, furniture, roofing, lumber products, fertilizer, mattresses, meat packing products, packaging machines, rock crushing and asphalt (North Carolina's largest), foundry and machine/shop products, livestock feed and seed cleaning, clay and cement brick, concrete, marble faced and cinder blocks, precision instruments, precision motors, electronics, components and accessories, business form, bakery products, venetian blinds, foods, nylon and—

Mr. Bryant: May I interrupt you just a moment? If Your Honor please, Mr. Dixon has suggested to me that they would permit this to be copied into the record without objection, and ask no questions about it, and in view of the fact that we have two other witnesses here who would not [fol. 685] be available tomorrow, we can follow your Honor's judgment and wishes, ask Mr. Parks to read this, it is comparatively short, or whether we have it copied.

Exam. Gibbons: I think in the interests of time, that it may be copied into the record as if read by the witness, and if there are no questions, the witness may be excused. Did you have any questions on this?

Mr. Dixon: No questions.

Mr. Bryant: I do have a question that I wanted to ask, some additional questions, and you may want to cross examine him about this addition.

By Mr. Bryant:

Q. Mr. Parks, is there any rail passenger service in and out of Durham other than these two trains, Nos. 13 and 16?

A. No, sir, there is none.

Q. Have you used these trains yourself in your business?

A. Yes, I have made a good many trips on these trains, to and from, mostly, New York.

Q. Have you had the opportunity to choose your own mode of transportation when you did that?

A. I only, I always choose my mode of transportation.

Q. Will you state for the record why you have chosen these trains 13 and 16 for use in your travels to and from New York?

A. I find it convenient. You can get to New York overnight, in time enough to get in a full day's work, and the [fol. 686] train leaving from New York in the early evening gives you plenty of time after a day's work to get on the train again. I find relaxation on the train, and we usually have some spare time in going from Durham, frequently there are some things that you want to review before you get into New York, and I find it convenient to use that time.

Q. Mr. Parks, have you had occasion in your business to look for locations for locating portions of your business?

A. Recently our company was interested in expansion of its printing department. Three locations were considered, two in North Carolina and one in Virginia, and the location finally decided upon was Reidsville, North Carolina. One of the considerations given to that location was the availability of rail service, both freight and passenger service. That is on the main line. Since that time, since that decision, we had occasion to review with the underwriters some problems in connection with plant protection, and two men came down on the Southern, one from Boston, Massachusetts, and one from New York, to Reidsville, where I met them in connection with our expansion program.

Q. Please state whether or not the availability of rail passenger service has anything to do with enabling that community either to locate or retain its industries.

A. As part of the personal experience just related, I believe passenger service is essential to growth of any community. [fol. 687] You can do a great deal more effective work by personal contacts than you can by telephone or other communication media, and I feel like travel is essential, and I feel like train service is essential to growth and development of any community.

Q. How would you relate that to growth and progress of the city of Durham, Mr. Parks?

A. It is hard to put any actual statistical yardstick, but I feel like it has been very instrumental in Durham's growth and development up to this point, and I believe the need for it is greater now than ever, with the expansion possibilities that we have in the area.

Q. Will you state, please, what you mean by the need for it now being greater than ever?

A. Durham is growing, there are some new industries coming to Durham, with the development and growth of the Research Triangle, it will mean more people coming to Durham, and certainly many of them would want to come by train, and need to come by train.

Q. And the paper which has been made a part of the record, in that you state the fact that branches, large branches of the American Tobacco Company and the Liggett and Myers Tobacco Company are located in Durham. Where are the home offices or the main offices for those two tobacco companies?

A. New York.

[fol. 688] Q. And do you know whether any of the officials of those companies, or any of the employees of those two tobacco companies, use these trains in going to and from New York?

A. I don't know first-hand how much Liggett and Myers uses them, but recently there was an auditor from our New York office that came down on the train, he much prefers the train, and he wanted to go back on the train, but he was not able to get reservations. On Thursday afternoon prior to his leaving on the Friday evening train, application for reservation was made by telephone for a bedroom. There was no information that came out of the office, so about between one and two o'clock on Friday, which was 24 hours after the application for reservations, no information had been received. In order to get home that evening, and he had been away from home for two weeks, and was anxious to get back, he cancelled his reservations and took a plane.

Q. Mr. Parks, I failed to ask you how frequently you yourself use these trains 13 and 16?

A. I usually find it necessary to go to New York three to five times a year, and during the ten years of my office as president, I have used trains most of the time.

Q. Mr. Jones calls my attention to one thing, you said this official of the American Tobacco Company cancelled?

A. He was not an official, he was an employee.

Q. Did the auditor cancel the application for the reservation?

[fol. 689] A. He never got the reservation, he had to cancel his application.

Mr. Bryant: I think that's all I want to ask Mr. Parks. Oh, just one question.

By Mr. Bryant:

Q. I believe Mr. Watts Carr, Jr., is the president of the Durham Chamber of Commerce, and he is at the present time out of the city, and will be for several days, will he not?

A. That is correct.

Mr. Bryant: That's all, thank you. That's all that I want to ask you.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Parks, it is your testimony, I believe, that you feel that passenger train service, I don't remember if you said desirable or helpful or necessary; to expansion of the community?

A. I think it is all three.

Q. Has Durham expanded any, population-wise, by industry in the last ten years?

A. By growth of the existing industries there has been expansion. The growth in population has been about 10,000 increase from 1950 to 1960 census, from my recollection.

Q. What has been the experience as far as passenger train service at Durham during that period is concerned?

A. Based on statistics that I have read, that has decreased until this year. I understand your passenger service is up about fifty per cent over last year.

Q. How about the number of trains, passenger trains, being operated through Durham?

A. That has decreased. There were four several years ago; I don't remember, but two were discontinued; now there are, there is one in each direction, per day.

Q. You have been in Durham for 25 years or so?

A. Approximately 24 years.

Q. When you were in Durham 24 years ago, do you recall how many railroads operated a passenger service in Durham?

A. I do not, I believe there were two, to my recollection. Norfolk Western services were discontinued several years ago, even prior to the time that Southern took off two of their trains.

Q. Would you know how many passenger trains were operated altogether, regardless of who operated them, when you went to Durham?

A. I don't know.

Q. Has Durham had any expansion that either you or your Chamber knows about, in the last two years?

A. There have been several industries that have come to Durham since that time, I believe the Crookill Curtain Company came to Durham about two years ago, then the Durham Drapery Corporation, and there is another industry [fol. 691] that is getting set up, that is getting ready to get into production now.

Q. Do you personally have anything to do with the solicitation of industry to locate in Durham or expand in Durham?

A. I do not.

Q. So you would have no—strike that. You make three to five business trips a year to New York, I believe you said?

A. Yes, sir.

Q. I believe you said that most of the time you went by railroad train?

A. That's correct.

Q. How do you go the other times?

A. I have been some by air, and I have been a time or two by automobile.

Q. What governs your preference?

A. Convenience, usually, and other factors; at times I have gone by automobile; I have had some intermediate stop-off points, for which automobile transportation was more convenient.

Q. What is the convenience of the railroad as related to the convenience of air travel?

A. I prefer the railroad because it has, it is a more relaxing trip, you have some time on the train, and I am speaking purely of getting on in Durham, you have some time in the evening before you want to retire, for reviewing information and things that you would want to consider; and you get in New York in time to get in a full day's activity of business.

[Vol. 692] Mr. Eisenhower: Thank you, sir.

Mr. Bryant: Thank you very much, Mr. Parks.

(Here is copied into the record Mr. Parks' prepared statement, as authorized by the Examiner:)

The Witness: (Continuing statement at point interrupted by Mr. Bryant) Durham has . . . "nylon and rayon refinishing, poultry processing, surgical instruments, cloth bags, lumber handling machinery, printing, synthetic yarns, draperies, and curtains.

"The large tobacco industries manufacture such well known brands as Duke's Mixture smoking tobacco, and 18 brands of cigarettes, including Chesterfield, Lucky Strike, Pall Mall, Tareyton, L & M and Dukes. 19% of the nation's cigarettes are made in Durham.

"The 1958 U. S. Census for Durham reports a total of 141 wholesale establishments employing 1,462 persons. Annual sales were found to be \$85.6 million dollars and the annual payroll was \$5.4 million dollars.

"While Durham cannot be considered an agricultural county, we nevertheless have over 1600 farms valued in excess of \$10 million dollars. Chief agricultural crops are tobacco and corn. Durham borders on the South-Atlantic cotton, fruit, and vegetable producing sections. Poultry and cattle raising have become major industries in recent years.

"Durham is in the greatest tobacco growing area in the [fol. 693] world. During the 1960 Tobacco Market season, 42,868,226 pounds of tobacco were sold in Durham warehouses for a total dollar value of \$26,192,912.17. 28.2% of all the tobacco sold last year in the Middle Belt market was sold in Durham.

"Additional diversification of Durham's economy is found in life, fire and hospital insurance companies located here.

Four large companies with offices in Durham are Home Security Life Insurance Company, Hospital Care Association (Blue Cross), North Carolina Mutual Life Insurance (Negro) and Bankers Fire Insurance Company (Negro). The Department Office of the Crum and Foster Group of insurance companies is also located here. The main headquarters of the General Telephone Company of the Southeast is also located in Durham.

"The Research Triangle Park of North Carolina, located approximately five miles east of Durham, is one of the nation's newest planned developments for industrial and governmental research. The park, over 4,600 acres in size, is in the center of the Research Triangle area of the state formed by Duke University at Durham, North Carolina State College at Raleigh, and the University of North Carolina at Chapel Hill. The Research Triangle Institute and Chemstrand are presently located in the park, and the Dreyfuss Foundation and U. S. Forestry Department research building are under construction. It is conservatively estimated that there will be over 30,000 persons working in the park area within 20 years.

[fol. 694] "Durham is also one of the Southeast's leading educational centers as attested by the fact that Duke University and North Carolina College (Negro) are located in Durham. In addition to the economic and social impact of these institutions, several research facilities such as Army Research Ordnance-Durham are located on the Duke University campus.

"Durham is the south's chief medical center. In addition to the hospital and medical school located at Duke University, Watts Hospital (Public, white), Lincoln Hospital (Public, Negro), McPherson Hospital (private, eye, ear, nose and throat), North Carolina Cerebral Palsy Hospital, and the Veteran's Administration Hospital are also located in Durham. The chief State Mental Institution (2400 beds), training school for the mentally retarded, N. C. Rehabilitation Center for the Blind, and alcoholic rehabilitation (voluntary treatment) are located at Butner, 12 miles north of Durham.

"Durham is rapidly becoming one of North Carolina's major convention centers. Durham is presently serving

over 50,000 convention delegates annually, and this figure is expected to increase during the next few years. New motel facilities are, as well as major improvements to the Jack Tar Durham hotel, assure Durham's future role as a major convention center.

"In addition to the schools of higher learning Durham has several business colleges and three private schools. The public schools of Durham are constantly progressing.

[fol. 695] "Durham is known as the sports center of the South. Considerable interest is shown in Inter-collegiate football, baseball, basketball, track and golf. Indicative of this interest is the Duke University stadium with accommodations for 57,000 and an indoor stadium which accommodates 12,000.

"Durham is the home of the Durham Bulls professional baseball team. This team is a member of the Carolina League. Professional wrestling is also enjoyed in Durham.

"Many recreational advantages are available in and around Durham. The city provides many facilities, such as 10 community recreation buildings, 5 swimming pools, 14 tennis courts, 14 athletic fields, 19 city playgrounds, 12 basketball courts, picnic areas. There are four 18 hole golf courses and two nine hole courses in addition to several bowling arenas.

"Cultural activities are prevalent in and around Durham. Duke University offers many exhibits, concerts, and theatrical productions of interest to many.

"Durham is a growing and prospering community. An indication of this is the fact that in 1960 1,339 permits for building were issued. These permits represented a value of \$15,671,393.

"There are two daily newspapers and several weekly newspapers. Durham also enjoys 4 radio stations and one television station.

"The City of Durham was founded April 26, 1853, and incorporated April 10, 1869. Durham has the Council-[fol. 696] Manager form of government. The city bonded debt as of December 31, 1960, was \$17,851,000. I would point out that this debt is very favorable compared with other North Carolina communities. Durham's 1961 tax levy is \$1.12. Durham has excellent Water Resources, Fire protection, Police protection, etc.

"Durham's transportation requirements are served by Eastern Air Lines, United Air Lines, and Piedmont Air Lines, all operating from the Raleigh-Durham Airport located approximately equi-distant from Raleigh and Durham. Six bus lines serve Durham utilizing highways 15, 70, and 501. 18 major truck firms operate from Durham. Five railroads serve Durham; Southern, Norfolk and Western, Durham and Southern, Norfolk Southern and Seaboard Air Line. The 2 passenger trains operated by Southern are the only rail passenger facilities to and from Durham."

"In summation, Durham is a leading North Carolina metropolitan community. Industry, Science, and Research, Medicine, and Education located in Durham have established a diversified base which will assure Durham's future importance to Central North Carolina. The rail passenger service in question is necessary to the future of this community."

Exam. Gibbons: The witness is excused.

(Witness excused.)

Mr. Bryant: Mr. Examiner, we don't want to trespass on the customary closing hour; but we have two witnesses [fol. 697] here, who I doubt will be available tomorrow. I think we can dispose of them in 15 or 20 minutes if you have no objection, if we can run over a little.

Exam. Gibbons: All right, proceed.

Mr. Burns: Mr. Lackey, come around, please.

R. O. LACKEY was duly sworn and testified as follows:

Direct examination.

By Mr. Burns:

Q. Would you state your name and address for the record, please?

A. My name is R. O. Lackey; I live at 1518 Ridgecrest Avenue, Burlington, North Carolina.

Q. What kind of business are you in, in Burlington?

A. I am in the milk distributing business.

Q. Is that business one that is primarily local in nature?

A. Our particular business is entirely local, just within Alamance County.

Q. Are you in any way associated with the Chamber of Commerce in Burlington and Alamance County?

A. I am presently serving as president of the Burlington-Alamance County Chamber of Commerce.

Q. I take it from your previous answer that you do not do a substantial amount of travel of any type?

A. I do not personally, no, sir.

Q. And you do not ride the trains personally?

[fol. 698] A. No, I rarely ride the trains.

Q. Would you tell me a little bit about the nature of Burlington, so far as its make-up of business activity is concerned? What type of businesses are there?

A. Burlington is primarily an industrial city, as is Alamance County, the local industry is dominated by textiles. We also have the electronic industry and Western Electric, and quite a bit of all phases of the textile industry, particularly hosiery.

Q. Some of the concerns located in Burlington, are they part of national organizations, with offices in other parts of the country?

A. Yes, I would say that most of them are either branches themselves of out-of-state industries, or have out-of-state branches themselves, like Burlington Mills, for instance.

Q. What about Western Electric?

A. Western Electric is a branch of the national corporation; as I understand it.

Q. Is there any sort of commercial air service in Burlington, North Carolina?

A. No, sir, none whatsoever.

Q. What is the closest commercial air transportation to Burlington?

A. Greensboro High Point Airport is 35 miles west of us, and Raleigh-Durham Airport is about 45 miles east of us. Those are the nearest points for commercial air service that we have.

[fol. 699] Q. Now, do you have direct through bus service to your own knowledge? To New York, from Burlington? Or would you have to go to Durham or Raleigh?

A. It is my opinion that the bus service to Burlington is

connecting with Greensboro, and either Durham or Raleigh, for north or south service. I do not believe they go direct.

Q. Are there any other trains, other than Passenger Trains 13 and 16, operated by Southern Railway, serving the city of Burlington, North Carolina?

A. There are no others, just these two.

Q. Now, what size city is Burlington?

A. Burlington has approximately 35,000 population.

Q. Do you know the population or the approximate population of Alamance County?

A. Alamance County has approximately 86,000 in the county.

Q. That figure includes the population of Burlington?

A. It does, yes.

Q. In your capacity as president of the Chamber of Commerce, and in your work with the Chamber of Commerce, have you had any dealings with various concerns seeking advice about possible locations for plants in and around Burlington, North Carolina?

A. We are actively soliciting new industry for our area, and we do have such inquiry from the prospects that we solicit to locate branches or businesses in Alamance County.

Q. Excuse me, are you through?

[fol. 700] A. Yes.

Q. Do the inquiries that you receive include inquiries relating to the availability of rail passenger service?

A. We do have such inquiries, yes.

Q. Is it your opinion that the availability of rail passenger service has been instrumental in the growth of Burlington, North Carolina?

A. It is my opinion that it has.

Q. Do you, as president of the Chamber of Commerce in Burlington, have an opinion satisfactory to yourself as to the effect on future growth of Burlington of the discontinuance of the last remaining rail transportation available in Burlington?

A. It is my opinion that it would seriously handicap our area as a possible located, possible location, for new industry, particularly in view of the fact that we do not have scheduled air service.

Mr. Burns: I believe that's all the questions I have.

By Mr. Burns:

Q. The removal of these trains would leave your town with a, with only such bus service as it might have connecting to through bus service from other towns, is that correct?

A. That is true.

Mr. Burns: That's all the questions I have.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Lackey, what is your connection with the Chamber of Commerce?

A. I am president of the Chamber this year.

Q. Do you have personal contact with the persons seeking industrial sites or expansion sites that inquire about Burlington?

A. Only on such occasions as our Business Expansion Committee may bring prospects to Burlington, which they have on two or three occasions, at which time I have met some of these prospects. My work as president does not directly and regularly involve me with seeking prospective new industries.

Q. I am interested in your statement that inquiries have been made concerning the availability of passenger service. On what do you predicate that?

A. On the reports of our Business Expansion Committee.

Q. When was the last time that you had any such report? That an industry was seeking to locate in Burlington, and was interested?

A. Within the past thirty days.

Q. What was the nature of that inquiry, was there a form sent out to be filled in by your Chamber Committee, such as might be sent to a number of places that were describing their advantages or what were the circumstances of that inquiry?

A. Approximately thirty days ago, we, or there was open in Burlington a new industry, which we held a formal opening for a new industry, Willard Industries, to be exact,

from Cincinnati, Ohio, and there were present at this occasion some friends of this industry from Cincinnati who were down for this occasion, and I was talking with two or three of them, who made inquiry about other possible locations in Burlington. The question of transportation came up at that time.

Q. Passenger transportation?

A. Yes.

Q. Were they interested in city-to-city transportation, or the commuting type passenger transportation?

A. I do not know. It could have been either, because the air line located, the air line service into Greensboro would require them to have commuter service to Burlington. I do not know; they did not specify.

Q. How far is the business district of Burlington from the railroad station in Greensboro, do you know?

A. Approximately 23 miles.

Q. Now, you gave an opinion concerning a direct or through bus service at Burlington. Upon what did you base that opinion, Mr. Lackey?

A. I have never seen any buses in Burlington that were showing, for instance, out-of-states points as their destination; that is what I based that opinion on.

Q. I believe you said you were not a frequent traveler yourself, you are not a bus rider, I take it, between cities?

A. No, sir.

Q. Excuse me just a moment.

[fol. 703] Mr. Lackey, has your Chamber of Commerce voted to protest the discontinuance of the two passenger trains in question?

A. Our Chamber has not taken any official action in that regard.

Q. Has a committee decided that it would be a good idea to protest, some committee of the Chamber?

A. I don't know of any committee, actually, along that line.

Q. Are you here representing the Chamber of Commerce today?

A. Yes, sir, I am representing the Chamber of Commerce.

Q. But without any formal action on their part?

A. That's right.

Q. Are you aware of the case before the North Carolina Utilities Commission in October, 1959, when Southern sought to discontinue the same two trains?

A. No, sir, I am not familiar with that.

Q. You would not know whether the Burlington Chamber of Commerce sought to oppose or not to oppose, or took any action in that connection?

A. No, sir, I do not.

Mr. Eisenhart: Thank you, Mr. Lackey.

Exam. Gibbons: I believe you mentioned, Mr. Lackey, that you don't have any air service?

The Witness: No.

Exam. Gibbons: Did the City of Burlington ever attempt to secure air service, did the Chamber of Commerce [fol. 704] ever have any discussion about the possibility of getting air service?

A. Not that I am familiar with.

Mr. Burns: May I ask him a question in connection with that?

Redirect examination.

By Mr. Burns:

Q. Isn't it a fact that the Civil Aeronautics Board has recently ordered consolidation of the airport of Winston-Salem with the airport of Greensboro and High Point?

A. I don't know that.

Exam. Gibbons: The witness may excused. Call your next witness.

(Witness excused.)

Mr. Burns: Mr. Cummings. Mr. Cummings, don't get that chair close enough to slide off the edge there.

HUGH M. CUMMINGS was duly sworn and testified as follows:

Direct examination.

By Mr. Burns:

Q. Would you please state your name and address for the record?

A. My name is Hugh M. Cummings. My address is Edgewood Avenue Extension, Burlington, North Carolina.

Q. Would you please describe briefly the nature of your business activities?

A. I am president of eight different corporations, primarily in textile and remnants and drapery, wholesale and [fol. 705] retail. We are fixing at the present time, my partner and myself, to build the first major shopping center in Alamance County.

Q. In connection with your business, do you find it necessary or convenient to make certain trips away from the Burlington area?

A. Yes, sir.

Q. To what point are the predominance of those trips made?

A. All of them are made to New York.

Q. Would you tell me approximately how often you travel to New York?

A. Four to five times a year.

Q. What method of transportation do you employ in making these trips?

A. Trains.

Q. Does that mean exclusively?

A. Exclusively trains.

Q. And by train, you mean the trains, the two passenger trains that operate through Burlington, North Carolina?

A. Yes, sir.

Q. Now, do employees of yours also have to make trips to and from New York?

A. Yes, sir.

Q. Approximately how many of your employees would you say are required to make such trips?

A. It will average three to five, buyers from various departments.

[fol. 706] Q. When they travel to New York, do you have any policy of your company in connection with the method of transportation which they are permitted to use?

A. I will not permit my key men to fly as a group. I have allowed a couple to fly when there were as many as five going. I have always had the fear of a plane crash taking the lives of my key men, as the Denver crash recently, luckily enough the owner, president of the Maybee Marble Company over there and his sales manager got out of that crash; but had both of them been killed, that company would have been wrecked; and I will not permit my key men to fly for that reason.

Q. Those men that you named are residents of Burlington, North Carolina?

A. Yes.

Q. Do you have customers from time to time who come to your offices in Burlington from points in New York and the northeast part of the United States?

A. I have them come to Burlington and Haw River.

Q. And do some, if not all, of those customers, come by train?

A. Some.

Q. Are you familiar with the train station at Burlington?

A. Yes, sir.

Q. Would you describe it for me?

A. The inside of it I have not been able to see for a long time.

[fol. 707] Q. Would you stop right there, and tell me why you have not been able to see it, since you testified that you use the trains?

A. The tickets must be picked up in the afternoon; the train station is not open when the train itself pulls into the station.

Q. In other words, the station is locked when the train comes in?

A. Right.

Q. Now, where do you wait at such times when you want to get on the train?

A. On the sidewalk between the station and where the train pulls in.

Q. Would you say that the station was generally a clean station?

A. No, sir.

Q. Would you say it was a well-painted station?

A. If there has been any paint put on it in the past seven or eight years, I am not familiar with it; I don't think so.

Q. When the train brings you into the station in Burlington, are you discharged on the platform for passengers?

A. No, sir.

Q. Would you tell us how you are discharged from the train?

A. The train's engine stops in order that the mail and freight might be taken off at the station. The last thing on [fol. 700] the end of the train is the passenger and Pullman cars. You must get off approximately a block from the station with your luggage, walk up to the station, regardless of weather or what not.

Q. In spite of these difficulties, you still testify that you ride the train. Would you tell us why?

A. My wife and three children, my wife says she will leave me when I get on a plane.

Q. Do you have any advantages as far as time is concerned? When you use the train?

A. Definitely.

Q. Could you tell me a little bit about that, please?

A. Either myself or my men who are going to New York to purchase in the New York market, try to put in a very full week. It is necessary that we can start early Monday morning, but getting on the train, we are able to arrive in New York early enough to get a full day's work in; otherwise we must catch the plane on Sunday night, go up, take a hotel room, which is an additional expense for these buyers, which I have sent on occasion, in order that they might be there in time enough to start a full day's work Monday morning.

Q. In your travels, have you had any experience that you would like to relate insofar as the type of equipment provided for your transportation by the railroad?

A. If the electric companies used the same type of equip-

ment, we would still be using kerosene lamps in Burlington [fol. 709] ton. The equipment many times rattles. I have had occasion to go down to the station and find a car that looked like it was taken out of some junk yard, to be informed that there was a wreck somewhere on the line, and the regular car had been put into service elsewhere.

I have had occasion in the winter of 1960, for myself and three other men, when we almost froze to death, and one of those men, Mr. Allingwood, told me the next morning that he put on every rag of clothes he had, and wrapped up with his blankets in order to stay comfortable.

I have found many types of engineers, jerking, quick stops, I have had occasion to find that I could not cut the heat off, when the heat got too high; as far as getting on the train, it seems to be a general practice today that either Car SR-33 or SR-34 coming out of New York is put on the tail-end of the train. The last three occasions, the train has not been long enough for that car, the platform has not been long enough for that car to get to the platform. You had to get on the train and walk through several cars, in order to get back to the Burlington car.

Q. I take it that what you are talking about now is coming back from New York?

A. Right, coming back.

Q. In spite of all these inconveniences, do I understand that your position is that the transportation provided is [fol. 710] still convenient and necessary to the operation of your business?

A. Yes, Sir, to the operation of the shopping center and the growth of Burlington, too.

Mr. Burns: I believe that's all the questions I have.

Cross examination.

By Mr. Eisenhart:

Q. Mr. Cummings, you don't seem to care too much for our service. Would it be fair to say that your position is that although you don't like the service, you like the air travel even less?

A. I have never traveled by air, and if I desire to keep my wife and children, I will not.

Q. When did you last travel by railroad, by our railroad?

A. In the spring of '61, the spring of this year.

Q. Would you know what month that was?

A. March.

Q. Was that the occasion when you had so much trouble getting on the train at Burlington and the train didn't stop at the station at the proper place?

A. The occasion, there has never been any other occasion, in about eight years of travel.

Q. How long is that train, Mr. Cummings?

A. I have never taken the time to count the number of cars; early in the morning when I was getting back with luggage, trying to get up to the station.

Q. Would you suggest that there are quite a number of [fol. 711] cars on the train that arrives in Burlington?

A. The number of cars I do not know. I know they put the freight car and the mail car where they can handle it at the station, and we are tacked on the tail-end. We have to walk at least a block.

Q. Would you be surprised to find that there are three cars on that train?

A. Three cars?

Q. Three cars, yes, sir. In March, 1961, for example?

A. Three passenger cars?

Q. No, three cars altogether.

A. If there were two diesel engines and three cars, that is five cars; I do not know the length of a train car; but if the engine stops at the station, that still puts the passenger getting out approximately a block, as I said earlier, from the station.

Q. Is there a mail car on that train at the present time?

A. I have no way of knowing that.

Q. Is there an express car on the train?

A. I have no way of knowing that.

Q. Is there a coach on the train?

A. I have no way of knowing that.

Q. Is there a Pullman car on the train?

A. I would either have to ride that or be riding in the engine, yes, sir.

[fol. 712]

Friday, July 14, 1961

ALLAN K. MANCHESTER was duly sworn and testified as follows:

[fol. 713]

Direct examination.

By Mr. Bryson:

Q. Dean Manchester, for the record would you please state your name and address?

A. Allan K. Manchester, Duke University.

Q. Where do you live in Durham?

A. At 406 Fifth Avenue.

Q. How long have you resided in Durham?

A. Since 1928, February.

Q. Dean Manchester, where are you employed at the present time, and in what capacity?

A. As Dean of Trinity College and Professor of History, Duke University.

Q. How long have you been connected with Duke University in one capacity or another?

A. Officially since September, 1929.

Q. Other than your connections with Duke University, are you a member of any societies or agencies, governmental or otherwise, as of the present time, sir? I don't mean to enumerate them, all but some of the more important ones.

A. A member of the US National Commission for Unesco, on the executive committee, which forces me to travel and the State Department USIA and such things as that.

Q. Dean Manchester, in connection with your duties at Duke University and as a member of these agencies, are you required to travel to other sections of the country, and [fol. 714] particularly into the Washington and New York area?

A. Yes. The Unesco and State Department, both to Washington and New York.

Q. And approximately how many trips do you make into these areas, either on a monthly or an annual basis?

A. Between 20 and 25, since about November of '58.

Q. Do you mean on an annual basis, or about that many trips during that period of time?

A. It runs during the winter months, a little in excess of one a month on average. Sometimes it would be two; rarely three.

Q. Dean Manchester, do you have the privilege of selecting your own method of travel?

A. Yes.

Q. What method or methods of travel do you use?

A. I use the car to Washington and New York, when I get a reservation.

Q. When you say the car, are you talking about the Southern Railway trains 13 and 16, that operate through Durham, and the pullman car, which is a part of the consist of that train?

A. Going to New York, yes. Now that they have put on what ever that roomette that I can get from Greensboro to Washington. We change in Greensboro going to Washington, that way, on the return we use this New York car.

[fol. 715] Q. Dean Manchester, without my interrupting you, would you state your reasons why you use this method of travel?

A. There are several. In the first place, these appointments, I want to be as sure as I can be, humanly speaking, to be there, and the railroad gets me there; whereas, in the wintertime, particularly the last two years, the problem of weather has made problematical any arrival in New York or departure, from Washington also. If I go up by air I lose an afternoon prior to and a morning following because in order to get an alternate, or provide for an alternate means of transportation, I must leave, oh, to get to New York, around 2:00, and have to leave home around 3:00 if I am going to Washington. So I lose an afternoon prior. The car I can finish the day's work, lose one day in New York at the meeting and get back the next morning for opening the office or class. The same thing is true of Washington, except for the return. I could get back by air if I weren't weathered in. So for this reason, both to be sure to get to my appointment and for convenience I take the train. It also saves me the bother

of making hotel reservations in New York. It's more convenient by far, this car for my purpose is a real convenience.

Q. A necessity, I believe?

A. Yes.

Q. Dean Manchester, I believe you said in addition to [fol. 716] your other duties at the University you have a teaching schedule to maintain?

A. Yes, sir. So I make these meetings if I can, on the days when I don't have classes, and this way, by using the car I can meet my classes and keep them up.

Q. Dean Manchester, approximately how many students, faculty and staff members are there at Duke University at the present time?

A. Approximately, during the past year, 5600 students of all kinds, undergraduate, graduate and professional; faculty and staff about 650.

Q. During the past several years—

A. Let me revise that. It ought to be more than 750 staff. About 750. I'm sorry.

Q. During the past several years, Dean Manchester, have you observed any effort on the part of Southern Railway Company to solicit patronage or to encourage the use of these trains by the people in the Durham area and particularly in the University Community?

A. I have noticed none.

Q. You have noticed none?

A. I am aware of none.

Q. That would go back over a period of how long, Dean Manchester?

A. As long as I can remember.

[fol. 717] Q. Is it a fact that during each year there are a number of conventions or institutional meetings of various types on the campus of Duke University, which are attended by people from other areas?

A. There are numbers of them. I am not able to give you any precise number because we have to carry a lot of research, but there are considerable number.

Q. Dean Manchester, have you discussed the matter of the continuance of these trains with some or any of your colleagues at the University?

A. It is always a topic of conversation among us who use the car.

Q. Do those of your colleagues whom you have discussed this matter with—

Mr. Dixon: I object.

Mr. Bryson: I haven't finished the question yet.

Mr. Dixon: You are leading and the answer is going to be hearsay, and I object on both grounds.

Mr. Bryson: Mr. Examiner, I don't believe we have up to this point been too technical.

Exam. Gibbons: Complete the question.

By Mr. Bryson:

Q. Dean Manchester, I believe you stated that you had discussed this matter of the continuance of these trains with many of your colleagues. State whether or not they expressed any concern to you over the matter of the abandonment of this service?

A. May I answer?

Exam. Gibbons: Is there any objection pending?

Mr. Dixon: Yes, the objection is pending.

Exam. Gibbons: Objection overruled.

The Witness: Yes.

Q. And state whether or not the reasons given are the same that you have expressed here on the witness stand here this morning?

Mr. Dixon: The objection is renewed. It's hearsay. He should bring his witness in here and prove his case, and not through this witness. We would like to ask these gentlemen all about it.

Mr. Burns: It would be perfectly agreeable with all the Counsel on this side of the table if you would agree to give us a reasonable continuance in setting the hearing at Durham, where we can produce these people.

Mr. Dixon: You have had a reasonable time to produce them.

Mr. Burns: We would be glad to produce them if you will agree to a continuance so we can have it in Durham where we can get these people.

Mr. Dixon: You have had a reasonable amount of time to—

Mr. Bryson: Would you agree that statements made by these people, even in affidavit form, would be admissible [fol. 719] to this hearing, the people that could not be here this morning. Would it be admissible?

Mr. Dixon: No.

Mr. Bryson: I submit, Your Honor, that the question is certainly proper under the conditions in which it was placed.

Exam. Gibbons: The witness may answer. The objection is overruled.

The Witness: What was the question?

By Mr. Bryson:

Q. I asked you to state whether or not they were concerned over the discontinuance or the possibility of the discontinuance of the, primarily the discontinuance—

A. Yes. For the matter of convenience, reasons for security of arriving, arrival certainty, to make appointments, matter of hotel reservations, this is the type of reasoning that we discussed.

Q. That they expressed?

A. Yes.

Q. Dean Manchester, in connection with your duties at Duke University and as a member of these agencies and societies that you have mentioned, in your experience and your travel convenience in your opinion, is the continuance of this train service a matter of convenience and necessity?

A. For me, absolutely.

Q. You may examine him.

[fol. 720] Cross examination.

By Mr. Dixon:

Q. Dean Manchester, do you ride the airplanes at all?

A. Yes. To Chicago. I ride them to New York only when I get into a bind and can't help it. This other is much more convenient. I used to ride the plane to Washington frequently until we got this more convenient way, the overnight over Greensboro, the old pullman car, you remember. You don't ride this train!

Q. Yes, I ride it sometimes. Are you talking about Car 9?

A. I am not sure of the number, but I can now transfer from the New York car to a Washington car that goes up on the same train, and it's a very convenient arrangement. Since then I haven't flown to Washington for a meeting, since I could get on that car. The trouble is getting on it—trying to get a reservation.

Q. You ride the pullman over to Greensboro and transfer and get on a Washington car. I guess you have to leave about 7:00 a.m.?

A. 7:30.

Q. And that way you ride to Washington exclusively?

A. Seven times by air. Once by air since I could use that car. That was an emergency. I couldn't get a reservation.

Q. You say seven times by air?

A. Prior to the time I could use this new arrangement. [fol. 721] I didn't like that old pullman car, with the curtains and so on. Since you have got a more convenient service, I have not ridden, I have only been once to Washington by air.

Q. How long has that been, do you know?

A. About a year ago it became available.

Q. Up until a year ago you went mostly by air to Washington?

A. To Washington.

Q. But since we have had a better car from Greensboro up, now you ride the train over to Greensboro and transfer and go up by train?

A. Yes.

And then come back by the New York car back.

Q. Are you fairly satisfied by the service?

A. No. I am satisfied with the schedule. Twice this past year, when I got on at New York the car hadn't been preheated, and it was an ice box, but even so I take it. I am satisfied with the schedule; I wish we could improve the service on it—the actual service in the car.

Q. Have you ever been on the car when it was too hot?

A. Yes.

Q. Sometimes it's too hot and sometimes it's too cold?

A. Yes.

Q. Just can't get it right?

A. Sometimes it's right; let's be honest about this, but

it's the schedule, the convenience of arrival and departure [fol. 722] that makes it imperative for my work.

Q. Do you travel at U.S. Government expense?

A. Partly U. S. Government, State Department; Unesco is not U. S. Government except indirectly, partly Duke and USIA, and sometimes my own.

Q. Does that have any bearing on your mode of transportation?

A. Not a bit. I can pick any I want.

Q. But of course you a little more to ride by rail than air, in the final analysis. I mean vice versa.

A. I don't know. By the time I add a hotel bill in New York and in and out limousine and what not.

Q. It would cost you more by air than rail?

A. I don't know. That isn't a factor.

Q. That isn't a factor?

A. It's the convenience to get there and back.

Q. Thank you, Dean.

Mr. Bryson: That's all.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

PAUL H. CLYDE was duly sworn and testified as follows:

Direct examination.

By Mr. Bryson:

Q. Dr. Clyde, would you please state your name and residence?

[fol. 723] A., Paul H. Clyde, 1211 Woodburn Road, Durham.

Q. Dr. Clyde, how long have you lived in Durham?

A. Nearly twenty-five years, 24 and $\frac{3}{4}$ years.

Q. What is your present position?

A. Secretary to the Committee on Educational Institutions of the Duke Endowment.

Q. Is your office located in Durham?

A. It is.

Q. And where are the main offices of the Duke Endowment located, sir?

A. There are three main offices of the Duke Endowment, one in New York, one in Charlotte and one in Durham.

Q. Now prior to the time, Dr. Clyde, that you became officially connected with the Duke Endowment in the capacity to which you just stated, were you connected with Duke University? And if so, in what capacity?

A. As a Professor of History, and then later years as Director of the Summer Session.

Q. Now, Dr. Clyde, in connection with your present office as Secretary of the Committee on Educational Institutions for the Duke Endowment, are you required to do much traveling or any traveling, and particularly into the northeastern section of the country, Washington and New York?

A. Yes.

Q. Are you permitted to choose the method of travel that [fol. 724] you use?

A. I am.

Q. And what method or methods of travel, Dr. Clyde, do you use?

A. I use both air and train.

Q. Do you have, do you recall, or can you state approximately the number—strike that, please.

Q. When you say you use the train, are you referring to these trains, Southern Railway trains 13 and 16 that operate in and out of Durham?

A. I am.

Q. Dr. Clyde, could you give us some estimate or exact number of times of recent, or whatever period of time you wish to express, that you have used these trains?

A. Well, in the period since the first of January of this year, I have made six trips, round trips, to New York or Washington, mostly to New York, and on these six trips five of them have been by the Durham-New York Pullman.

Q. How was the other one made?

A. By air.

Q. During the years that you were connected with Duke University I assume that you maintained your office on the campus there?

A. That's right.

Q. During that period of years, Dr. Clyde, did you ob-
[fol. 725] serve or notice any effort on the part of the
Southern Railway Company to solicit or encourage patron-
age of the people in that community to use the service pro-
vided by these trains?

A. Nobody that I recall ever approached me.

Q. Do you ever recall seeing any notice or anything
there in connection with solicitation?

A. No.

Q. Dr. Clyde, in view of your experience and the require-
ments of your office, do you have an opinion as to whether
the continuance of these trains is a matter of convenience
and necessity?

Mr. Dixon: I object on the grounds that that's a question
of law.

Mr. Bryson: To you personally, Dr. Clyde?

Exam. Gibbons: Just a minute. We have let this in
previously during the hearing. I know that that's a con-
clusion that the Commission is called upon to decide, but
I am going to permit the witness to express an opinion.

Off the record.

(Discussion off the record.)

Exam. Gibbons: On the record.

By Mr. Bryson:

Q. Dr. Clyde, I believe the last question that was asked
you was whether, in your opinion, the continuance of these
trains is a matter of convenience and necessity so far as you
are concerned.

[fol. 726] A. So far as I am concerned, yes.

Q. Examine him, sir.

Mr. Dixon: No questions, sir.

Mr. Bryson: That's all, sir.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

HENRY VINCENT NEWSON was duly sworn and testified as follows:

Direct examination.

By Mr. Bryson:

Q. Dr. Newson, for the record would you please state your name, and—

A. Henry Vincent Newson, begins in "N" and ends in "n", 1111 North Gregson Street, Durham, North Carolina.

Q. Dr. Newson, how long have you lived in Durham?

A. Since the fall of 1948.

Q. Where are you presently employed, and in what capacity, sir?

A. I am a Professor of Physics at Duke University, and I am also Director of the Nuclear Structure Laboratory.

Q. Dr. Newson, in connection with your duties and employment at Duke University, are you a member of any Federal Agencies or Commissions or Committees of such?

A. I am a member of the Advisory Committee of Reactor Safeguards, which advises the Chairman of the Atomic Energy Commission on the safety of reactors. I am also a [fol. 727] member of the Nuclear Cross Section Advisory Group, which advises the Research Director—

Q. We can't hear with this interruption in the back-ground. I suggest we be quiet, please.

Go ahead, sir.

A. I just finished that statement. I am a member of two committees.

Q. Are those committees under the jurisdiction of the United States Atomic Energy Commission?

A. Yes, they are, both of them.

Q. If you are permitted to do so, Dr. Newson, would you state the function first of the Advisory Committee on Reactor Safeguards?

A. The Committee on Reactor Safeguards was set up by statute in the latest atomic energy act. It is required by law that we review all power reactors, and all test reactors. It is further required by law that our opinions be published wherever security permits.

Q. Dr. Newson, primarily where is the business of this Committee carried on, or where are the meetings held?

A. Usually in Washington, D. C.

Q. In connection with your attendance of these meetings, you of course have to travel to and from the Durham area, I believe?

A. Yes.

[fol. 728] Q. About how often do you make trips in connection with your work in this particular committee?

A. Very nearly once a month. I have had a few bouts of illness lately; if it had not been for that I would have made twelve round trips to Washington for a year, for this committee work.

Q. I believe you also stated that you are a member of a Nuclear Cross Section Advisory Group?

A. That's correct.

Q. What is, if you are permitted to say, Dr. Newson, what is the function of that committee?

A. It was sort of a liaison committee between the applied work of the AEC, that is their bomb laboratories and their power laboratories, etc. We advise them what sort of fundamental measurements they need for this applied work, and we also attempt to carry the word that third measurements are needed. We carry that word to the people that know how to do the measuring.

Q. Does your membership or your work with this committee require you to do any traveling, Dr. Newson?

A. That requires about two to three trips a year.

Q. Into what areas?

A. About every other year I make a round trip to the West Coast and back.

Q. Do you travel into the Washington and New York [fol. 729] area in connection with your work?

A. Yes. I take this train to Washington.

Q. Dr. Newson, as a member of these committees, are you permitted to select your own method of travel?

A. I am.

Q. What method of travel do you use in traveling to the Washington and New York area?

A. I always take these trains under dispute, except in cases of extreme emergency.

Q. That is the Southern Railway Trains 13 and 16?

A. That's right.

Q. Dr. Newson, without my interrupting you, would you please explain or state the reasons why you use this method of travel?

A. I have not been in very good health the last couple of years, and my doctor has warned me to stay away from situations of tension, and I am very tense when I ride the plane. So I only take a plane in an emergency.

Q. In connection with your duties at Duke University, what project or projects are you presently directing?

A. I direct the Nuclear Structure Laboratory, and aside from teaching and departmental duties.

Q. In connection with that work, do you often have scientists and other interested people from other areas come to Duke University to participate in this work?

[fol. 730] A. Yes. We have consultants, and we invite consultants and speakers to come down rather frequently, both for this work and for the physics department.

Q. Dr. Newson, state whether or not the fact that the Southern Railway offers this passenger train service in and out of Durham is of any particular assistance to you in carrying on this work?

A. This makes it easier, the convenience of this service makes it easier to attract some consultants and speakers. Yes.

Q. Two further questions. Dr. Newson, in connection with the work that you are carrying on as a member of these Commissions and in connection with the work that you are carrying on in these research projects at Duke University, which you have just mentioned, in your opinion, is the continuance of these trains 13 and 16 a matter of convenience and necessity?

A. It certainly is a great help in our operations to offer this rather convenient overnight service to Washington and New York.

Q. Dr. Newson, state whether or not you are here today testifying in your individual capacity as a citizen and resident of the community of Durham?

A. Well, I would certainly be willing to do so.

Q. You are not here representing any governmental agency?

[fol. 731] A. The Atomic Energy Commission Advisory Committee has written a letter to the Interstate Commerce Commission about this case, stating that they believe which is a fact that my services will not be available to as great an extent to this committee work without this train.

Q. That's all I have to ask at the moment.

That's all. You may cross examine.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: On the record.

Cross examination.

By Mr. Dixon:

Q. Dr. Newson, do you have the copy of the letter that you say the Atomic Energy Committee wrote the ICC?

A. Mr. Bryson has a copy.

Mr. Bryson: Would you like to see the letter?

Mr. Dixon: Yes, I certainly would.

Mr. Bryson: May I ask him if this is the letter?

Mr. Dixon: Yes.

Mr. Bryson: Is that the letter that you were referring to, Dr. Newson?

The Witness: That's the letter.

Exam. Gibbons: Proceed.

By Mr. Dixon:

Q. Dr. Newson, is the Advisory Committee on Reactor Safeguards a full time agency of the United States Government? [fol. 732]

A. No. It is an Agency, that we hold regular meetings every other month, and extra meetings perhaps three or four additional ones each year, in addition to sub committee meetings. Each member spends something on the order of 40 to 50 days a year on this work.

Q. So I take that you are not representing the Commis-

sion at this time, that the letter of July 10 to Mr. Jerome Lyle, the Chief Examiner of the Bureau of Finance, represents the position of any agency of the United States with respect to this case?

A. The Committee which the Chairman wrote that letter, is an unofficial agency of the government.

Q. Can you answer that question yes or not and then qualify it any way you like?

A. Now, will you please ask the question again?

Q. I take it from your previous answer that you are not suggesting to the ICC at this time, that the position stated in the letter of July 10, 1961, from Mr. C. Rogers McCullough, Vice Chairman of the Advisory Committee on Reactor Safeguards, to Gerome Lyle, the Chief Hearing Examiner in the Bureau of Finance, represents the position of any agency of the United States, with respect to this case?

A. I am not a lawyer, sir. I would have said this this Committee was an agency of the United States.

[fol. 733] Q. I thought you just said it wasn't.

A. No, on the contrary. I said it was an official body set up by law.

Q. May we have the testimony read back?

Exam. Gibbons: Reread the testimony.

(Testimony read.)

The Witness: What my answer was that I am not a full time employee of the United States Government. The agency exists at all times. It carries on a very voluminous correspondence with us, but the meetings are just periodic.

By Mr. Dixon:

Q. What agency are you referring to?

A. The Advisory Committee on Reactor Safeguards.

Q. You are not referring to the Atomic Energy Commission?

A. The Advisory Committee on Reactor Safeguards is part of the legal set up of the Atomic Energy Commission?

Q. But it works on a part time basis?

A. The members are part time employees of the Government. We sign a contract; we take an oath of office.

Q. Now, Dr. Newson, are we to understand, and this is important, that this letter represents the position of the United States Government with respect to these trains?

A. The man who signed the letter is an official of the United States Government.

Q. I didn't ask you that. I would like a yes or no answer, and then you qualify it.

[fol. 734] A. I think this is again a matter of law.

Q. You answer the question.

Mr. Jones: Your Honor, please, I object to that. Mr. Dixon has asked the witness if this represents substantially the views of the United States, and the United States is a right big place, and it has a whole lot of different angles. I don't know if he'll confine it to whether or not this expresses the official views of this agency that wrote this letter, then I think it's competent; otherwise, I am objecting.

Exam. Gibbons: The witness may answer.

The Witness: I just don't know what constitutes the United States Government or official agency. I do know that the man who signed the letter is an official of the government.

By Mr. Dixon:

Q. What?

A. The man who signed the letter is an official of the government.

Q. Is he a full time employee?

A. No. He is not full time. He spends more than half of his time and lives in Washington.

Q. Just who is he? Is he a Professor in some school?

A. No. He is a chemist who worked for many years for the Monsanto Chemical Company.

Exam. Gibbons: Where does he live in Washington?

The Witness: He lives in Washington, D. C., yes.

[fol. 735] Q. Are his offices in St. Louis?

A. He has recently resigned and now works with a private consulting firm. I don't remember the name of that firm.

Q. Now, did you know whether he had any legal authorization to write this letter?

Mr. Burns: Objection on the grounds that the grounds assumes that legal authorization was required to write the letter.

Mr. Dixon: There is no question about that. Was this letter authorized by the Budget Bureau?

Exam. Gibbons: The witness may answer.

The Witness: I am sure it wasn't. I have no official knowledge. You must remember that this hearing was called on short notice. I had no time to go into any more elaborate procedures than this.

By Mr. Dixon:

Q. What do you call short notice?

A. I didn't hear about it until I was on the train itself last Wednesday evening.

Q. And that's what you call short notice?

A. I was extremely busy between that time and the time of this hearing.

Exam. Gibbons: Did you request Mr. McCullough to write this letter?

The Witness: I told him the situation and that my services on there, the Committee, might be curtailed if these [fol. 736] trains were taken off.

Q. Did you draft this letter?

A. I did not.

Q. Did you make any suggestion whatever as to the verbiage used in this letter?

A. I did not, sir.

Q. Do you have a copy of the memorandum you wrote Mr. McCullough?

A. I did not make any memorandum. I was at a meeting in Washington last week and told them of this situation.

Q. Did he sit down at that time and prepare this letter and send it to Mr. Lyles?

A. No. That was on a Saturday that we discussed this, last Saturday. The following Monday he drafted the letter.

Q. Did you talk to him on the following Monday?

A. I talked to one of his assistants and they said the letter was copies, and he told me when I was expected to receive it, and that's all.

Q. Dr. Newson, you don't know whether Mr. McCullough, during the period from the time you talked with him on Saturday until Monday when the letter was written, whether he cleared this with anybody, or just did it on his own hunch, do you?

A. I don't think he had time. I don't know.

Q. I have no further questions on the letter, but I would like to ask two or three questions about how much you [fol. 737] travel on the trains and by air. I think you said you made two or three trips, and I take those to be round trips, to Washington and New York per year?

A. No. I make about one round trip per month.

Q. One round trip per month? How did I get down here two or three trips per year?

A. There was another committee which requires two or three longer trips per year.

Q. But you make one or two trips per month?

A. One trip per month, or perhaps a little less. I think it averages close to twelve trips per year.

Q. And that's to and from Washington on these trains?

A. Occasionally to and from New York and Boston.

Q. And you don't travel by air because of your health?

A. That's right.

Q. Do you ride the Pullman over to Greensboro and then transfer to the Washington car?

A. I do, yes.

Q. And then coming back you use the New York car, of course?

A. Yes.

Q. I think that's all I have. Thank you very much.

Redirect examination.

By Mr. Bryson:

Q. Just one further question, Dr. Newson. I believe you stated in response to a question by Mr. Dixon, that you first heard of the pendency of this hearing, or that this [fol. 738] hearing would be held, Wednesday of last week, I believe you said, while you were on the train?

A. That's correct.

Q. That's Wednesday of last week?

A. That's correct.

Q. Do you recall the date and what that date was?

A. I would have to look at a calendar.

Q. You needn't go to that trouble, sir. Dr. Newson, is this letter or copy of the letter which I hand you, a copy of the letter that you received, which was entitled "Advisory Committee on Reactor Safeguards, United States Atomic Energy Commission, Washington, D. C., dated July 10, 1961, and signed by C. Rogers McCullough, as Vice Chairman. Is that a copy of the original of the letter that you received, sir?

A. Yes. I have an initialed copy.

Q. I would like to have the copy of this letter identified by the witness and marked as Protestant's Exhibit No.

Exam. Gibbons: It will be marked as H24.

(Protestant's Exhibit H 24, Witness Newson, marked for identification.)

By Mr. Bryson:

Q. I believe that's all. I am told, sir, that the calendar says that the date of last Wednesday was July 5. Wednesday of last week was July 5.

A. I attended a meeting that started July 6.

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[fol. 739] DARYL HART was duly sworn and testified as follows:

Direct examination.

By Mr. Bryson:

Q. Dr. Hart, for the purpose of the record, would you please state your name and address?

A. Daryl Hart, 2324 Duke University Road, President of Duke University.

Q. Dr. Hart, when did you become President of Duke University?

A. The first of July, 1960.

Q. Prior to that time I believe you served in the capacity of acting President?

[fol. 740] A. No, that was the time that I started in acting President, and they made my appointment retroactive to that time.

Q. Prior to that time, what position did you—

A. Professor and Chairman of Department of Surgery.

Q. How long did you occupy that position?

A. Thirty years.

Q. Dr. Hart, I know that you a member of many medical societies and distinguished groups, and I will not ask you to take the time to enumerate those, but in connection with your office as President of Duke University, and as a member of these societies and groups, you have occasion to do much traveling, or any traveling particularly into the Washington and New York areas?

A. Yes.

Q. You, of course, have the privilege of selecting your own method of transportation?

A. Yes.

Q. And what method of transportation or methods do you use, Dr. Hart?

A. For distant traveling I use the train. On short trips I use a motor car.

Q. You use a motor car?

A. Yes.

Q. Do you have any approximation or specific idea as [fol. 741] to the number of trips you made by train, shall

we say since the first of January of this year? By train that is?

A. For the year I have been in the Presidency of Duke I have had five trips to New York, I believe. One to Edgewater Park, Mississippi, and then going to Boston and coming back to Durham in a round trip circuit. That's not by train. I have had any number of train trips otherwise, not involving this particular area, Chicago, Florida, etc.

Q. In your train trips, Dr. Hart, do you make use of Southern Railway Trains 13 and 16, the trains which are in dispute in this proceeding. That is, the Southern Railway trains which serve the Durham people?

A. Yes. In the trip to Edgewater Park I had to catch the train south in Greensboro, but I rode the train from Boston to New York and back to Durham. I rode that train back, but it didn't have suitable connections going south.

Q. Dr. Hart, I believe the Executive Committee, the Board of Trustees of Duke University, meets in Durham approximately once a month, does it not?

A. Yes.

Q. Are there any members of the Executive Committee who reside in New York?

A. Yes. There are three.

Q. To your own personal knowledge, do any of these three members of the Executive Committee make use of [fol. 742] these trains, 13 and 16, in attending these meetings?

A. Yes.

Q. Dr. Hart, since you have been at Duke University, do you have knowledge, or have you noticed any effort made by Southern Railway Company, by way of advertising or solicitation to solicit patronage of people in the Duke University community?

A. No.

Q. In your opinion, sir, is the continuation of this service afforded by these trains, 13 and 16, a matter of convenience and necessity?

A. Yes.

Q. I believe that's all the questions I have.

Exam. Gibbons: Cross examination is in order.

Cross examination.

By Mr. Dixon:

Q. Dr. Hart, you said that you had made five trips to New York. What period were those trips made in?

A. In the past year.

Q. In the past twelve months?

A. Yes.

Q. Were they all by train?

A. Yes.

Q. How many during the same period did you make by air?

A. None.

Q. None?

[fol. 743] A. That's right.

Q. Would you say that are exclusively a train rider?

A. I said I took short trips and occasionally a long trip, if I have time, I take it by car; but my travel is by train.

Q. You do not ride the planes?

A. I have ridden a plane, but my travel is, particularly to New York areas, by train; because I can get out at 5:55 in the evening, and get into New York the next morning and come back the next morning.

Q. You spoke of the Trustees of Duke University and the Executive Committee?

A. Yes.

Q. And I think that three of them live in New York?

A. Yes. That is three of the Executive Committee live in New York.

Q. Do they exclusively ride the train?

A. No, they do not ride the train exclusively. There are times when they ride other means of transportation. I would not attempt to say why they ride other means, but my opinion would be it depends on the time and the availability and the convenience of their schedule. But they do ride the trains many times, I can say. The last meeting of the Executive Committee, all three members from New York rode the train down.

Q. Would you be able to tell us approximately how often

[fol. 744] those three men ride the trains versus the airlines?

A. I could not, without making a study. I know at least one that the train is his marked choice. I couldn't give you the personal opinions of the others. One of those men told me that he rode the trains if he could fit it into his schedule.

Q. How many men are on the Executive Committee, Dr. Hart?

A. Six. Six at the present form the Executive Committee.

Q. We have been discussing the three who live in New York?

A. Yes.

Q. Dealing with the other three, how do they get to Durham?

A. They are short travel, usually by motor car.

Q. By motor car?

A. Yes. Those three would come from Charlotte, High Point and Winston-Salem, and they more commonly come by motor.

Q. How often do the trustees of Duke University meet?

A. The Trustees meet approximately twice a year.

Q. How many of those?

A. There are thirty-six.

Q. Do you know how they get to and from Durham?

A. I could not tell you about the group as a whole. I know that the group from New York would come in a similar manner to the way they come to the Executive Committee, depending on their time schedule and convenience, I would say. But I could not tell you the details of the Trustee meeting; it's only twice a year. The Executive Committee meeting I have more to do with, I have more intimate knowledge, because it meets so frequently.

Q. Do you think it would be fair to say that the Trustees would be divided about evenly between rail and air?

A. I couldn't say about the Trustees. A larger percentage of the Trustees live in the North Carolina area, but there are some who are widely scattered. I couldn't tell you how they travel.

Q. Did you know Sidney Alderman?

A. I don't believe I do.

Q. He was my former boss and a Trustee of Duke University.

A. I don't believe he is a Trustee at the present time.

Q. He isn't any more. He has moved out of the country and gone to France on a—

A. I didn't know him, and I thought I knew every Trustee.

Q. Now, sir, I have asked you about your own travels and I have asked you about the Trustees, and I have asked you about the Executive Committee, and now I want to ask you about the young people that go to school at Duke. To what extent do they ride these trains?

A. I have no information in regard to that.

Q. Is there any system in the University under which young people, from bulletin boards or otherwise, are able [fol. 746] to arrange car pools or private rides to places like Washington, D. C.?

A. I have no information in regard to it. I don't know. They have bulletin boards, but I don't have any information as to whether they go into car pools. If I had to make a guess I would say that if there were some boys from Washington and they wanted someone to go in, that they would probably try to find them; but I have no information in regard to it.

Q. I am sure your guess is right, but I want to ask you this. Don't you ever look at the bulletin boards in the corridors of Duke?

A. I do not go into the unit where the students are and look at the bulletin boards. My headquarters are in the Allen Building, the administration. I go to Union, but I do not go over and inspect the bulletin boards.

Q. Has Duke University, in any way, as far back as you can recollect, helped to promote the patronage on these two trains?

A. I have no knowledge of that.

Q. Sir?

A. Helped to promote it, officially or as individuals—I have no knowledge of that.

Q. You don't know that Duke has done anything whatever to keep these two trains on the road?

A. I should think they are doing a great deal right now; [fol. 747] Mr. Bryson representing Duke University; that would be my impression.

Q. I would be inclined to agree with you on that point, but I am not talking about that. I am talking about some effort which might have been made over the years by Duke and Carolina and State, to promote a little patronage on these trains, and make them pay their way. Do you know of anything that these three universities have done in that connection?

A. I think I can answer that, though not in an official capacity. I just heard of it. I remember one—they used to have special trains running out north and south, I suppose, at the time of school's opening and closing. I can recall once, when I tried coming down from New York by train, I tried to get them to hold up a football special out of Richmond so I could catch it and get to Durham a little faster; and I didn't succeed. But there have been special trains arranged at times. There was some agitation for arranging a special train to Texas last Christmas. I have heard those. I have no official knowledge of it, but there was talk around the institution.

Q. Except for these special movements, there has been no plan or program or any determined effort on the part of these great universities in North Carolina, to do something that would keep these trains running, has there?

[fol. 748] **A.** I would say that the institution does not attempt to tell the student what mode of transportation he will take.

Q. I take it from your answer that the answer to my prior question would be "no", Doctor. Is that fair?

A. I have given the answer, and I would like it to stay as I gave it.

Q. This case was tried before the Utilities Commission of North Carolina on October 1959, just after the Fall Semester began in the '59-'60 year, and the Counsel, one of my brother lawyers in opposition, put two young men on the stand who testified that they had been commissioned by Duke or some student organization, or maybe—I won't be quite technical,

but you know what I am talking about—to go down to the Southern Railway Station and meet the inbound students as they came to matriculate in the Fall of 1959. The testimony, which is a part of this record, showed that you had around 5000 young people matriculate in the Fall of 1959. Is that around right? Is that fairly good?

A. I would say so.

Q. Do you know how many of those folks rode the train into Durham?

A. I have no knowledge of this.

Q. You are going to be greatly surprised—

Mr. Burns: I want to object. He is mis-stating the evidence in the record before. The record before shows that [fol. 749] the freshmen are met by members of an Orientation Committee of Sophomores from Duke University. This only relates to the Freshmen Orientation Week.

Mr. Bryson: We move to strike the statement of Counsel from the record.

Exam. Gibbons: The motion to strike will be denied. This record before the State Commission has been made part of this hearing.

Mr. Bryson: And we say the record speaks for itself.

Mr. Bryant: The remark to which I made the motion to strike, was about that, "You are going to be surprised."

Mr. Dixon: I agree to that. Strike it.

Mr. Bryson: I submit, Mr. Examiner, that that record speaks for itself.

Exam. Gibbons: Strike the statement to the question of Counsel, beginning with the word "Surprise."

By Mr. Dixon:

Q. This record shows that out of that group of young people who came to Duke to matriculate in the Fall of 1959, thirty-four rode the train during that week.

Mr. Bryson: Objection.

Mr. Dixon: On what ground?

Mr. Bryson: I object to that, Mr. Examiner, because he asked the President how many students were in resident

at Duke University of that year. I thought you asked him if there weren't some 5000 students?

[fol. 750] Mr. Dixon: I said the record showed it.

Mr. Bryson: And he said yes, approximately, that there were about 5000 students there. Now, as the Attorney General said, I think the record would also show that the function of these students was only in connection with a group of freshmen who came into the university. Not in connection with the overall operation of the university.

Exam. Gibbons: With that understanding—

Mr. Burns: May I make this additional statement? Counsel has already examined Dr. Hart about whether or not he knows anything about student travel, and he has said that he does not. Now this is a collateral matter; Counsel having asked a question on a collateral matter is bound by the answer of the witness. Now the witness has answered he knows nothing about it, and I think that's the end of questions in that area.

Mr. Dixon: I think I agree with Mr. Burns. That's all I have.

Redirect examination.

By Mr. Bryson:

Q. Mr. Dixon, I have one further question. Mr. Dixon asked you what efforts the university was making in order to encourage travel and solicit patronage on this railroad. Dr. Hart, what efforts to your knowledge is the railroad company itself making to encourage patronage and solicit passengers to use the train?

[fol. 751] Mr. Dixon, may I have that question repeated, please. I was talking with my associate.

Exam. Gibbons: Reread the question, please.

(Question read.)

Exam. Gibbons: Back on the record.

By Mr. Bryson:

Q. Would you answer.

A. I have no knowledge of any help that was given by the railroad.

Q. That's all I have, sir.

Exam. Gibbons: The witness may be excused.

[fol. 752] RICHARD AREY was duly sworn and testified as follows:

Direct examination.

[fol. 753] By Mr. Bryant:

Q. Mr. Arey, what is your occupation?

A. General Manager, Jack Tar Hotel.

Q. And prior to the hotel being known as the Jack Tar Hotel, what was the name of it?

A. The Washington Duke Hotel.

Q. How recently was the name changed to the Jack Tar Hotel?

A. Last July 1, 1960.

Q. How long have you been connected with the Washington Duke Hotel and the Jack Tar Hotel?

A. Three and a half years.

Q. And in what capacity?

A. As General Manager.

Q. Mr. Arey, during this time have you had an opportunity to make any investigation or obtain any information as to the types of patrons of your hotel, and the method by which they arrive and depart from the city of Durham?

A. Yes, sir. We have taken a survey and found that over 50% of our guests come into the Jack Tar of Durham, arrive other than by automobile. This is a survey made for the past two years.

Q. Now, of the more than 50% who arrive other than by automobile, do any of them arrive by either of these trains, numbers 13 and 16?

A. Yes, sir. Every day, I would say. I don't know the exact actual count, but all reservations request by letter

come across my desk, and not a day goes by that we do not have requests for reservations, whereas they indicate that they will be arriving on the early morning train, or whatever hour it might be and want their rooms available at that time.

Q. And what is it as to the departure?

A. Same. Also, we are requested—our check out time is 3:00 o'clock in the afternoon, and they request late check outs so they may catch the 6:00 o'clock train.

Q. Mr. Arey, will you give us such information as you have as to the types of businesses of those people who indicate that they expect to arrive or depart by the Southern trains 13 and 16?

A. The largest number that I know of, that come to Durham by train, are those, that stay with us, that are out patients at Duke Hospital, for examination. They are out patients under examination by the doctors at Duke. Also we have practically all the industries in town have people who stay with us, who arrive by train. We have many sample men who bring their wares and travel by train. We have to make special arrangements to meet them and transport [fol. 755] them and their wares to the hotel, and I would say that our largest number comes from Conventions. We have some thirty thousand people that attend conventions in Durham each year, and I don't have any idea of the number, but I do know that many of them travel by train.

Q. In connection with the out patients at Duke University, is there a doctor in Durham at Duke University, named Kempner?

A. Yes, sir.

Q. Does he give any particular type of treatment which attracts patients to Durham?

A. Yes, sir. We have on the average of thirty of his patients in the hotel at all times, or more.

Q. I believe that's known as the Rice Treatment for hypertension, is it not?

A. Yes.

Q. Do you know whether those patients, or many of them use these trains in going to and from Durham?

A. The patients I referred to a while ago, most of them are there for hypertension treatments.

Q. Do I understand you to say that it is your knowledge that they do use these trains?

A. Yes, sir. Definitely.

Q. Do you know whether Duke University conducts a number of medical symposia during the course of the year? [fol. 756] A. Yes, sir, many of them. We cooperate with them. We classify that as a convention, whether sessions are held at Duke or at the hotel, and we handle most of the large groups at the hotel or the Holiday Inn.

Q. I believe they also hold ICC hearings at your hotel in Durham, on occasions, do they not?

A. Yes, sir.

Q. Do you know whether the people arrive by the method of these Southern trains by those hearings?

A. I couldn't definitely answer that.

Q. Mr. Argy, in your experience in the operation of the Washington Duke Hotel and the Jack Tar Hotel, would you say that you had a varied type of client or guest for your hotel?

A. You mean by that a variety of the different classes?

Q. Yes.

A. Yes, sir. Many.

Q. Now for the comfort and necessity and convenience of those guests of yours who stay in the hotel there in Durham, would you please state whether or not the continued operation of these trains, nos. 13 and 16, serve a necessary or convenient purpose?

A. Yes, sir. Very much so, and I point out also that through the convention solicitation, which I happen to be the chairman of the Chamber of Commerce, that the dis-[fol. 757] continuance of these trains would be very detrimental to the national conventions and regional conventions that we can attract to Durham. Durham being one of the largest medical and educational centers in the world. We have a multitude of conventions that are attended.

Q. I would like you to make a short clarification of your statement that Durham constitutes one of the medical centers of the United States?

A. Yes, sir. We have people that stay in our hotel that

come from all over the world, not only the United States, but all over the world. Many times we have people who come in to go to Duke Hospital to be examined from Egypt, India, Germany, all over the world, plus mostly from the United States.

Q. And a number of those uses the Southern trains?

A. Yes, sir.

Q. Now I would like to ask you, sir, if there is a Veterans' Hospital in addition to the Duke Hospital located in or near Durham?

A. Yes, sir.

Q. Do you happen to know the approximate number of beds in the Veterans' Hospital?

A. I am not sure, but I think around 500.

Q. Do you know the approximate number of beds at Duke Hospital?

[fol. 758] A. I could not correctly answer that.

Q. Do you know whether it is approximately 500?

A. It's more, I think.

Q. I ask you also, if there is another hospital or other hospitals in Durham?

A. Watts Hospital. Yes, sir.

Q. Watts Hospital?

A. Yes.

Q. Just without being precise, but approximately, what is the number of beds there?

A. I would say approximately 500 there.

Q. Is there also a negro hospital in Durham?

A. Yes, sir.

Q. I believe that is known as the Lincoln Hospital?

A. That's correct.

Q. I believe there is also a hospital known as the McPherson Hospital, which specializes in nose, throat and eye diseases?

A. Yes, sir.

Q. Will you please state whether there is any hospital or medical facility at the University of North Carolina?

A. Yes, sir. At the medical school and dental school and also hospital.

Q. Just approximately, what is the capacity of that hospital, known as the Memorial Hospital?

A. I would estimate it at around 500.

[fol. 759]. Q. And that, I believe is how far from Durham?

A. It's nine miles, I believe, from the city limits.

Q. You may examine him.

Cross examination.

By Mr. Dixon:

Q. Sir, I didn't get your name. Is it Arey?

A. A-r-e-y. Arey.

Q. Mr. Arey, you referred to certain tests that you have made over a period of two years, which indicated that 50% of the people coming to your hotel move other than by automobile—

Mr. Bryant: Mr. Dixon, may I correct you. I think he said more than 50%.

The Witness: More than 50% of our people.

Mr. Bryant: By a method other than automobile.

The Witness: To be precise on that, more than 50% of our rooms are occupied by those that come—other than those that come by automobile.

By Mr. Dixon:

Q. When was this test made?

A. The last two years. It began in January of 1959 and ended in July of this year.

Q. January of '59 through June '61?

A. Through June of '61, yes.

Q. That's more than two years, isn't it? About two and a half years?

[fol. 760] A. Approximately two and a half years. It started in the latter part of January '59.

Q. Will you please tell us, during that period, how many people you booked?

A. You mean how many rooms were occupied?

Q. Yes.

A. I don't have those figures with me, sir.

Q. Do you have the extent to which it was single or double occupancy, or otherwise?

A. Our records show, that on a yearly average, that our rooms are 1.4 double occupancy. In other words, our room is 1.4 per room.

Q. Would that apply during this two and a half year period?

A. Yes, sir.

Q. Now, is there some figure that we would use to multiply by 1.4 to get the full occupancy of your hotel during this period? I'm trying to find out how many of these people rode on Southern Railway.

A. I would estimate in excess of 70,000.

Q. During this two and a half year period beginning January 1, 1959 through June 30, 1961, you think that you booked 70,000 people?

A. I'm basing that annually, not over that two and a half years. That's on a yearly basis, about 70,000.

Q. So in order to get the number of people during your [fol. 761] test period, we would have to multiply 70,000 by $2\frac{1}{2}$?

A. That's right. Yes, sir.

Q. So that would be 210,000 people?

A. That's my estimate.

Mr. Bryant: The arithmetic is based on a three year period, instead of two and a half. You said 210,000.

Mr. Dixon: Could we go off the record a minute.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: Back on the record.

By Mr. Dixon:

Q. I stand corrected. 175,000. Yes, sir. 175,000 people have been your guests during the last two and a half-years, you estimate?

A. Yes.

Q. How many of those people were shown in your test, who have ridden the Southern Railway?

A. I do not have that information. The survey was taken to see how people arrived, other than automobile, and other than that I do not have it. I wouldn't want to even estimate it.

Q. When you say by automobile, do you mean by private automobile only?

A. Yes, sir.

Q. People arriving by bus would not be included in the 50% that arrive by automobile?

[fol. 762] A. That's correct. We have very few buses.

Q. You have quite a few airplanes, don't you?

A. Yes, sir.

Q. How many of these people rode the airplanes?

A. I do not have that information. Our survey was just to determine automobile arrivals.

Q. For what purpose was this survey made?

A. We are constructing a new garage at the hotel to accommodate more automobiles and we wanted to see how many, so that we could determine what to build.

Q. Now, sir, you have referred to the various hospitals and medical schools and medical centers in this area and you have told us approximately how many beds those facilities contain. Can you tell us to what extent those beds are occupied?

A. No, sir.

Q. You don't know anything at all about the use of those beds, do you?

A. You mean in the hospitals?

Q. Yes.

A. I understand that they have a very high occupancy.

Q. Do you know how much?

A. If I am not mistaken, I think that Watts Hospital runs approximately 85% occupancy.

Q. Where did you get that figure?

[fol. 763] A. I don't think this information is to be used for any fact. I might be entirely wrong.

Q. Would your same answer apply to the other hospitals?

A. My estimate would be that all the hospitals run in occupancy of more than 90%. It would just be an estimate on my part.

Q. And it could be wrong?

A. It could be wrong, yes, sir.

Q. Now, can you tell us to what extent the railroad is

used, in handling these sick people to and from these hospitals and medical schools?

A. The people that I am speaking of that stay with us are out patients. They are people that stay at the hotel and take treatment at the hospital, and some of the Rice patients that we referred to eat at Rice Houses.

Q. These out patients constitute a very small part of the total occupancy of these medical places, do they not?

A. They wouldn't represent any of their occupancy?

Q. They are patients.

A. Not representatives—

Q. Now, just what would that amount to? How many do you have and to what extent do they use the trains?

A. I do not know how many use the trains. I just stated before that not a day goes by but my eye catches, where it might be one, two, three reservations a day, or maybe [fol. 764] more state that they will be arriving by train, and others come by train. They don't say how they arrive. I know that for a fact.

Q. Have you ever seen these sick people get on or off the train?

A. No, sir.

Q. How are they transported between your hotel and the train?

A. By taxi, and also some of the letters request that our superintendent service pick them up, and we arrange for them to be picked up.

Q. Can you tell us how often any of this happens, so we can form some ideas?

A. When we are called on to do that personally at the hotel?

Q. Yes.

A. Oh, I would say on the average of once or twice a week.

Q. Once or twice a week?

A. Most of them come by taxi.

Q. Do some of these people come in by air?

A. Yes, sir.

Q. And I guess some of them are driven from Greensboro by ambulance, aren't they?

A. Well, the patients who arrive by ambulance would not stay with us.

[fol. 765] Q. I am talking about the hospitals.

A. Probably so.

Q. That's all. Thank you, sir.

Redirect examination.

By Mr. Bryant:

Q. How far is the Washington Duke Hotel from the Southern Railway Passenger Station in Durham?

A. Approximately three blocks.

Q. What is the present room capacity of the hotel, known as the Jack Tar?

A. 300 rooms.

Q. That's all I want to ask you. Oh, just one question, please. Do you know, of your own personal knowledge, whether or not some of the hospitals in Durham have waiting lists?

A. Oh, yes.

Q. That's all I want to ask the witness.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

T. MILBURN was duly sworn and testified as follows:

Direct examination.

By Mr. Bryant:

Q. Will you please state your name and initials. For the record spell your last name, if you will.

A. T. Milburn, M-i-l-b-u-r-n.

Q. And you live in Durham, I believe, Mr. Milburn?

A. That's correct.

[fol. 766] Q. What is your occupation?

A. I am a retired industrial engineer, acting as Executive Director of Durham's Committee of 100, which is a committee seeking to increase the industrial development of Durham.

Q. How long have you been occupied as the chairman of the Committee of 100?

A. Executive Director.

Q. How long have you been the Executive Director of this committee to try to get industrial service to Durham?

A. Since 1955, July 1.

Q. Mr. Milburn, from that time please state what efforts, please state what the nature of your efforts have been to increase the industrial plants in Durham?

A. Well, of course the first thing you have to do is make an assessment of the area, which more or less follows the type made by the industrial plant location services, and see that your area conforms generally to what they use as criteria for a community into which they wish to take an industry that they represent. After we got that job done the problem was to get prospects who were interested in our area for the reasons set forth in the industrial survey of the area.

Q. In your industrial survey, has it been necessary for you to make a survey of the utilities and facilities including transportation facilities into and from the city of Durham [fol. 767] and the Durham area?

A. Mr. Bryant, we naturally follow the plant survey people; Alfred D. Little, Lockwood Green, Boston and similar type engineering firms sell their services to manufacturers to locate plants for them. So what we have done in Durham is to use a composite structure of the various reports which these people require from us covering the areas of interest to which the manufacturer has.

Q. And Mr. Milburn, have you put that in the form of a pamphlet for this survey?

A. That's right.

Q. Do you have a copy of that with you?

A. I do.

Q. I believe this is the only copy that you have brought with you to Raleigh today, but you do have a number of other copies available at your office?

A. We printed 5,000 of these for general distribution, and we have about 2,500 left.

Mr. Bryant: Off the record, please.

Exam. Gibbons: Off the record.

(Discussion off the record.)

Exam. Gibbons: Back on the record.

By Mr. Bryant:

Q. May it please Your Honor, this is the only copy of this which the witness, Mr. Milburn, has brought with him to Raleigh this morning. I desire to have this identified [fol. 768] by Mr. Milburn and to offer it as an exhibit, and to furnish to the Examiner and to Counsel for the Southern such number of copies as may deem desirable for those purposes.

Exam. Gibbons: What do you want this referred to as? How do you want it described?

By Mr. Bryant:

Q. How do you describe it?

A. If you please, we call that the Durham booklet. It's a pictorial story of Durham and factual story.

Exam. Gibbons: The Durham booklet then may be identified as Exhibit H 25. Will the reporter please mark this?

(Protestant's Exhibit H 25, Witness Milburn, marked for identification.)

Mr. Bryant: Now, how many copies will the Commission require, if Your Honor please?

Exam. Gibbons: The Commission now has its copy. I would like a copy for my own personal files.

Mr. Bryant: How many copies would the railroad like to have?

Mr. Dixon: Just one.

Mr. Bryant: I will personally undertake to see that they are furnished both to the Commissioner and to Counsel for the railroad.

Mr. Dixon: Mr. Examiner, before it is received we would like to look it over.

[fol. 769] Exam. Gibbons: Very well. Has it been offered in evidence?

Mr. Bryant: I am offering it now, if Your Honor please.

Exam. Gibbons: The ruling will be temporarily deferred on that.

Mr. Dixon: Sir, assuming that we will go beyond Lunch time, could we have until then to look it over?

Mr. Bryant: Certainly.

By Mr. Bryant:

Q. Now, Mr. Milburn, in this industrial survey which you have made, state please for the record how many rail passenger trains go into and depart from the city of Durham at the present time?

A. As far as I know, Mr. Bryant, it's only the two. The morning and the evening Southern Passenger Train.

Q. I believe they have been referred to as trains 13 and 16 of the Southern Railway Company?

A. I think so.

Q. And without those two, would there be any rail passenger service in or out of Durham?

A. Certainly none that I have a record of.

Q. Now, Mr. Milburn, after making this survey have you had opportunity to contact prospective industrial enterprises with a view to seeking their location in or near the Durham area?

A. Now Mr. Bryant, we run a processing of about twelve [fol. 770] to fifteen prospects a month.

Q. Do you interview these prospects yourself?

A. Each one personally.

Q. Where do you interview the prospects?

A. On occasion at the hotel. Ninety per cent of the time in my office for the first time, and those that I interview at the hotel ultimately wind up in my office, where the information is available.

Q. You also, doing your duties for seeking industries for the Durham area, make trips outside of Durham?

A. Quite often.

Q. To what cities mainly?

A. Well, usually the east, occasionally the west, middle-west, we confine ourselves to from Boston south and stop at Durham, and sometimes we go to Pittsburgh, Cleveland, Akron, and the west.

Q. Since you have undertaken this work in 1955, will you state what mode of transportation you use when you leave the city of Durham on your business to interview prospects?

A. Without exception the Southern Railway train.

Q. Why do you adopt that mode of transportation?

A. It is excellent service into New York overnight, and then we are there ready to do business; in Philadelphia or Washington even shorter than that. And I prefer to go by train.

Q. Mr. Milburn, in your solicitation of new industry for [fol. 771] the city of Durham and in the effort to retain the industry which we already have in the city of Durham, I ask you if you will state whether or not the question of rail passenger service is a factor?

A. Well, I think, Mr. Bryant, I would have to amplify that a little.

Q. Amplify it in your own way, and amplify it in your answer, please.

A. This is an industrial manual, which I have put together, representing what I consider to be the best sort of the various plant locating services who sell their services to manufacturers. And I have come up with a composite area plant survey which lists as follows, the requirements, the pluses and minus area as it compares to other areas, if my water supply is better we give it a plus, if it's worse we give it a minus and so forth. We have come up for our own use with a categorical list as follows: The first requirement he has is home plant requirements, the second is labor history availability and cause, the third raw materials, and the fourth transportation, rail, plane and bus and truck.

Q. Does that transportation include rail passenger transportation, Mr. Milburn. Is that one of the factors in the transportation?

A. I was going to give it to you just as it appears, Mr. Bryant. Under rail transportation, we come up with rail [fol. 772] transportation, carriers serving the area and type of service available, freight service, number of days to and from New York, etc., and preferred passenger service. And we have always been asked to name the significant connections typical of the lapse of time and the departures of the passenger trains.

Q. So you would say that that is a factor which enters into the location of industry or the retention of present industry?

A. I would have to say yes.

Q. Mr. Milburn, has there been growth in the economic and industrial interests of the city of Durham during the past five years or ten years?

A. Mr. Bryant, I am not too familiar with it, when you go to ten years. You see, I was out of Durham a long time, but since the Committee of 100 office was activated in 1955 in July we have secured fourteen new industries for Durham, representing about two and a half million dollars worth of new construction and about 750 to 800 new employees.

Q. Mr. Milburn, with your experience in the retention of the present industry and your experience in an effort to bring prospective industry to the Durham area, I ask you to state whether or not in your opinion, this passenger rail service would be an important factor in retaining and bringing in new industry?

[fol. 773] A. Mr. Bryant, my answer would be that any industrial engineer would hate to lose a plus which he has. We don't have too many of them. I consider it and recommend it to my office and advisory group that the passenger group was a very favorable thing for us to report, and I would hate for us to lose it.

Q. Do these two passenger trains represent a convenient and necessary mode of travel into the city of Durham?

A. My answer would have to go back to my records. For instance, the Durham Hoisery Mill, with a little more than a million dollar operation there, Mr. Sledge, Mr. Crawley—

Q. Without asking you to name the people?

A. They use the train entirely if they can.

Q. Which train are you speaking of?

A. The Southern Railway New York train. They go to New York, to the New York office.

Q. Are these two trains 13 and 16?

A. That's right. The same thing is true of Mr. Kingson of Mills, Kingson Mills, who we landed last year. I know he uses the train. I don't know to what extent.

Q. I believe you may examine Mr. Milburn.

Cross examination.

By Mr. Dixon:

Q. Mr. Milburn, I think you said that you contacted on the average of twelve to fifteen persons a year?

A. A month.

[fol. 774] Q. Twelve to fifteen persons a month with respect to the industrial development in Durham and its environs, is that correct?

A. That's correct, sir.

Q. In viewing these people, what do you have to say to them about railroad passenger service?

A. I tell them that we have an overnight connection, pullman service to New York. That's in the brochure that Mr. Bryant filed.

Q. Is that all you say to them about it?

A. That's all we say.

Q. Do you say that to them whether they ask you or not?

A. I do not. The answer to that is a little categorical. As a matter of fact, we have about a fifteen page agenda which they furnish us and that is included in it. It isn't a question of words; we submit a written report.

Q. Do they send you some kind of an inquiry. Is that it?

A. Usually they bring it with them, if it's one of the plant locating services. They have a booklet about this, and they just sit down across the desk with you and go through it. When it's individuals representing their own companies or engineers representing a particular manufacturer, he develops the material in your own office from the vast material which we submit to him.

Q. How does this railroad passenger service/business [fol. 775] arise? That's what I am trying to figure out?

A. What, sir?

Q. The railroad passenger question arise, how does that get into the picture?

A. Well, very simply that we have one of the fifteen sections of the survey in our answer is transportation, and communications. And it's further broken down by rail transportation service, freight service, and passenger service, and we are required to put under the various headings the answer to their questions.

Q. Whose questions?

A. Either the questions submitted by the plant locating service or the engineers representing the plant interested in our area.

Q. Is that just sort of a stock that you have prepared over some period of time, so that when these inquiries come in, you just sort of dish it out. Is that the way you do it?

A. That's partly true. We have to use a form. If we didn't, we would be lost, but we do tailor it to meet the particular industry, the type manufacturing which he does, the number of people which he has, and the source of end sale of his product. To that extent it is tailored to his use; otherwise it does follow a formula, yes—which keeps us on track.

Q. Mr. Milburn, I have known you a long time, and I am [fol. 776] sure you will realize I am not trying to downgrade what you do. I'm just trying to find out what it is for the benefit of this record. Now, this actually is sort of like a stock exhibit or catalog or booklet which has been prepared, showing all of these matters concerning Durham, which you give to the folks that you think have some interest in locating a branch or plant in Durham. Isn't that true?

A. That is correct.

Q. In that paper you probably have mentioned the rail passenger, trains, the buses and the airlines, and everything that concerns Durham?

A. Everything that is a plus. I don't mention the minuses.

Q. I should like to ask this question. And Mr. Milburn, I know that you are going to try to give me a specific answer. Taking the last available period that you can remember, I would like to know the names of the people that you have interviewed and who have asked you initially about rail passenger service to and from Durham?

A. As you put it, the best I can remember, I would say in the last year there have probably been five or six who have initiated. Does that answer your question?

Q. Partly, yes, sir. Now I would like for you to give me

their names and the companies that they are connected with?

A. Well, there are two of them whose names I cannot give you. They don't want their names used. I will give [fol. 777] you Kingson Mills, the Providence Chemical Company of Providence, Eastern Air Lines, New York, and there are probably one or two others, but I don't remember whether they initiated or I did. When we get into a sales pitch, we don't put down what we say. We just tell the best story we can, and if I think of it I certainly tell them we have overnight service to New York by Pullman.

Q. You said you thought, in the past year, was it—that there have been five or six who initiated this question?

A. That's correct, if I understood your question correctly. That they asked me about passenger service to or from Durham.

Q. Rail passenger?

A. That's right.

Q. Now you said there were five or six and you gave us the names of three. The first was, was it Kingston Mills?

A. K-i-n-s-o-n.

Q. Was he the gentleman who testified already in this case?

A. Yes.

Q. Yes, he has. Next was the Providence Chemical Company. What happened to that deal?

A. We lost it to Charlotte.

Q. You lost it to Charlotte?

A. Bill Belfield, I guess he got them.

Q. What about Eastern Air Lines? What happened to that?

[fol. 778] A. In Charlotte, too.

Q. Now you say you travel to the east, western and south, and middle west, and that all of your travel is made by the trains involved in this case?

A. That's right.

Q. How often do you use these trains?

A. Oh, you run an average per year, my answer would be whenever I need to. But by the year I would say perhaps once a month, maybe not quite so often. Seven or eight times a year.

Q. That's all I have, Mr. Milburn.

Mr. Bryant: Thank you very much, Mr. Milburn.

Exam. Gibbons: The witness may be excused.

(Witness excused.)

F. M. SOUTHERLAND was duly sworn and testified as follows:

Direct examination.

By Mr. Burns:

Q. Mr. Southerland, you have been sworn, have you not?

A. Yes.

Q. Would you please state your name and address for the record?

A. F. M. Southerland, Mebane, North Carolina.

Q. What type of business are you engaged in?

A. Southerland Dye & Finishing Plant.

[fol. 779] Q. Is that located in Mebane?

A. Yes.

Q. Would you please tell us for the record where Mebane, North Carolina is in relation to Raleigh and Greensboro?

A. Mebane would be about fifty miles west of Raleigh, and twenty miles west of Durham, about thirty miles east of Greensboro.

Q. Is Mebane on the line of the Southern Railway running between Greensboro and Goldsboro?

A. Yes, it is.

Q. Passenger trains 13 and 16 stop and pick up and discharge passengers at Mebane?

A. That's correct.

Q. Is there any air service available in Mebane, North Carolina?

A. No. Only the Raleigh-Durham Airport and the Greensboro Airport.

Q. Is one closer than the other, or is it about the same distance?

A. About the same distance.

Q. Is the Greensboro airport located on the Mebane side of Greensboro, or on the other side of Greensboro?

A. It is on the other side.

Q. In other words, you have to go through Greensboro to get to the airport?

A. All around it.

[fol. 780] Q. Did you say about how far that airport was from Mebane?

A. I think the Greensboro airport is around 45 miles, and it's approximately the same, maybe a little shorter to the Raleigh-Durham.

Q. In connection with your business in Mebane, I believe you said you were in the textile business—dye and finishing?

A. That's right.

Q. Do you have any occasion to do any traveling?

A. Yes. Once in a while.

Q. Where do you travel?

A. Into the New York area.

Q. For what purpose is that travel?

A. To see the purchasing agents that we are connected with.

Q. About how often would you say that you went to New York?

A. No more than I can help. I would say two or three times a year.

Q. In your travel to New York, what type of transportation do you use?

A. I use Southern Railway. The ones you are speaking of—13 and 16.

Q. Are there other textile mills in the Mebane area?

A. Yes. There is Kale Knitting Mills and Dixie Mercerizing out of Chattanooga, Tennessee, has a plant there.

Q. Do you know, out of your own knowledge, whether officials or employees of these other companies in Mebane [fol. 781] make use of these trains to any extent?

A. Yes, I know a few of the men that use the train occasionally.

Q. Have you actually seen them?

A. I have seen them get on.

Q. Are you generally satisfied with the service that you

have received on the railroad, particularly trains 13 and 16 of the Southern Railway?

A. Generally, yes. I am pretty well satisfied with the service. The pullmans could be a little bit cleaner once in a while, but for the convenience of it, I can put up with it.

Q. Where do you buy your tickets and make your reservations for these trains?

A. I have bought them in Mebane and in Burlington.

Q. What is the reason why you select these trains as a method of transportation to New York?

A. I can leave the house five minutes before train time and be on the train.

Q. Is there a train station in Mebane?

A. Yes.

Q. Is there a bus station in Mebane?

A. No.

Q. Did I understand your answer in regard to the use of the trains, that you use them for convenience in getting [fol. 782] to and from New York?

A. Yes, that's right. It is the most convenient way from this area.

Q. Would, in your opinion, the discontinuance of these trains, adversely affect the business in which you are engaged and the community in which you live?

A. In my opinion, I think it would adversely affect the area in which all of us live here, in say taking from Alamance down through Orange, Durham and Wake County. We have the Research Triangle, which is between Raleigh, Durham and Chapel Hill, that is trying to building into a big thing, and which I think it will be in time. And frankly, I think this particular area of North Carolina would be one of the heaviest populated areas per square mile as we will have any place around us in the next ten or fifteen years. And I do think that by taking off the the two passenger trains that we have, will adversely affect maybe some of the people that might want to move their industries into our particular area here, and we are all connected together as close as we are, and all need to work together in bringing industries to our own

communities or close to us. I do think that it will have an effect upon that.

Q. One other question. What does the railroad do, to your own knowledge, to promote its service in the area in which you live?

[fol. 783] A. The area in which I live, I do not know of anything that it does to promote the passenger service that's available to us. I think once in a while they will run an ad in the Burlington Times News, or in our own local weekly paper, but as far as promoting the available passenger service, I can't remember seeing anything in our paper there at home.

Q. The ads you talk about, do they advertise passenger service generally, or freight service?

A. Freight and passenger. I can't remember the details that were in the ad.

Q. I believe that's all the questions I have of Mr. Southerland.

Cross examination.

By Mr. Dixon:

Q. Mr. Southerland, how often do you ride these trains?

A. I would say around two to three times a year. Sometimes it might be one. If I can get out of it, it won't be any. But whenever I go I go on the Southern Railway.

Q. You are not much of a traveler, then?

A. I am not much of a traveler.

Q. Do you ever ride the airlines?

A. I have ridden the airline into New York, over the past twelve years, one time.

Q. You also referred to other people who ride the trains or airlines, can you tell us just what that amounts to?

[fol. 784] A. Well, the industries there in Mebane, it could amount to right much. Particularly I am thinking of White Furniture Company.

Q. I think you used the word "could" there. I am asking you what it does amount to?

A. I would say it amounts to— I know of two men in particular with White Furniture Company, that they go

into the New York furniture area at least a couple of times a month. There's one other man there with Kale Knitting Mills, he will go up probably at least an average of once or twice a month. And Apparel, Incorporated there in Mebane, one of the gentlemen with them will go to the New York, Philadelphia area around once or twice a month.

Q. Do they go on the train?

A. Sometimes. I have seen them get on. In fact, I have been on the train with them.

Q. And sometimes they go by air?

A. I assume they do.

Q. When people living in Mebane go to New York by air, do they use the Greensboro-High Point airport?

A. They use both of them, I think.

Q. What is the other one?

A. I don't know which one they use more than the other.

Q. I don't know the name of the other one?

A. Raleigh-Durham.

[fol. 785] Q. I thought it might be Winston-Salem.

A. I used Winston-Salem coming back from Atlantic City not long ago. It was the only place I could get in.

Q. How did you get from the Winston-Salem airport about to Mebane?

A. Limousine to Greensboro, and then my wife met me at Greensboro. Took as long to get from Atlantic City as it would to come on the train.

Q. You said there was no bus station in Mebane. Should we assume from that that there is no bus service between Mebane and Greensboro?

A. No. There are buses that come through Mebane, but there is no bus station. They stop in front of the theater or drug store, some place along there.

Q. Have you ever ridden a bus between Mebane and Greensboro?

A. No.

Q. Are the schedules very frequent? Do you happen to know?

A. Not too many. I am just going by what I see in coming through.

Q. Now you said something in your direct testimony

about this area becoming a very heavily populated area, did you not?

A. I did.

Q. I should like to ask you this. Isn't it already one of the heaviest populated areas in the state of North Carolina?

[fol. 786] A. I haven't seen the statistics lately, but I think it is one of our most heavily populated areas here, and it is still growing.

Q. We are talking now, about the area between Raleigh, Goldsboro and Durham, Mebane and Greensboro?

A. That's right.

Q. That's all I have. Thank you, sir, very much.

Exam. Gibbons: The witness may be excused.

Mr. Burns: May I ask him one other question?

Exam. Gibbons: All right.

Redirect examination.

By Mr. Burns:

Q. When it comes right down to it, Mr. Southerland, about the only way you can get to New York is on this train, isn't it?

A. Well, I'll say it's the most convenient. I will say that. You can get there other ways, but it is the most convenient, and I frankly think that if they would really get out and promote that train through this area, I think they would get a lot of passengers.

Q. That's all, sir.

Mr. Burns: May I ask that the witness be excused.

Exam. Gibbons: The witness has already been excused.

(Witness excused.)

Mr. Burns: At this time may I take up something that we had yesterday? Exhibits—pardon me, we'll go ahead [fol. 787] with another witness.

Exam. Gibbons: This witness has been sworn, hasn't he?

Mr. Jones: Yes, sir.

FRANK W. JONES having been duly sworn, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name, please?

A. Frank W. Jones.

Q. Mr. Jones, what is your occupation?

A. Office manager of Belk-Liggett Department Store in Durham.

Q. What kind of business does Belk-Liggett Department Store engage in?

A. All types of ladies' apparel, notions, jewelry, hosiery, most anything we can get to sell.

Q. In connection with the conduct of the business of Belk's Department Store, do you have buyers that have to travel to the New York market and other markets to buy material which you sell?

A. Yes, sir. We have to send buyers into the market over a period of ten months of the year.

Q. How many buyers do you ordinarily send at a time, during a ten months' out of the year?

A. Four to six buyers.

Q. Now, Mr. Jones, please state means of transportation [fol. 788] these buyers, four to six buyers, use about, in a ten month period in a year, to go to New York and buy merchandise for your company?

A. Sir, we use train service almost exclusively.

Q. Which trains?

A. 13 and 16 out of Durham.

Q. Are the trains the ones that we are speaking of in this hearing, is that right?

A. Yes, sir.

Q. Now, that goes for the trips from Durham to New York?

A. That's right, sir.

Q. Does it also apply to the trips from New York back to Durham?

A. Yes, sir.

Q. I believe you stated that that method of transportation is used exclusively?

A. That's right, sir.

Q. Now, Mr. Jones, will you please state for the Hearing Examiner and for the record, why your buyers use this method of transportation to and from New York?

A. There are several reasons why we use it. First reason, it is more convenient, the train schedule complies with our store opening and closing and people do not lose any selling time before they go to the market. Second reason is that the buyers have pullman accommodations and they [fol. 789] can arrive in New York and do a full day's work and have a good night's rest before they get there. Third reason, we usually send a man with the lady buyers and he can control the group there and do it better than any other method of transportation.

Q. This hearing concerns an application which has been filed by the Southern Railway Company for permission to discontinue the operation of these trains that your people have been using. Now if the authorities grant this application and discontinue the use of these trains, please state whether or not that would have any adverse effect upon the convenience and necessity and conduct of business in which you are engaged?

A. Yes, sir. It would have adverse conditions. It would mean that we would have to plan trips far enough ahead that someone could carry these people to, say Greensboro, by station wagon so that they could catch the train out of there.

Q. Would that result in a waste of time?

A. It would, sir.

Q. And expense?

A. We would require this person to carry these people to Greensboro. He would have to go there and come back and then at the end of the week, which is the normal time of a trip, he would have to go back and get them and then come back.

Q. Mr. Jones, you have just spoken in reference to the [fol. 790] buyers for your own company, Belk-Liggett Company?

A. Yes, sir.

Q. Do you know anything about the custom of the buyers for Ellis-Stone, Baldwin's and these other department stores in Durham, in this connection?

A. Yes, sir. They all ride the train. I don't know that they ride it exclusively, but they ride the train.

Q. Do they ride it very frequently?

A. Yes, sir.

Q. That is, these same trains?

A. That's right, because your buyers go to market as the season progresses, and usually the same stores send the same type of buyers.

Q. And those stores that I have just named, Ellis Stone Company, for instance, is a very large store, is it not?

A. Yes, sir.

Q. Baldwin's Store in Durham is a fairly large store, is it not?

A. Yes, sir.

Q. And of course your own store, Belk's is a very large store?

A. Yes, sir.

Q. And you say that these other stores use about the same methods that you employ?

A. Yes, sir.

[fol. 791], Q. And these buyers use these two trains?

A. That's right, sir.

Q. You may examine him.

Cross examination.

By Mr. Dixon:

Q. Mr. Jones, it's a little hard to hear over this amplifying system. What is your capacity? Is it Belk—B-e-l-k-s?

A. Belk-Liggett. It's a hyphenated word.

Q. Could you get up closer?

A. Belk, B-e-l-k, hyphenated word, Liggett Company.

Q. What is your capacity?

A. Office manager.

Q. And that's at a department store in Durham?

A. Yes, sir.

Q. I think you said something about buyers coming to

and from your store for, four or six times over a period of ten months?

A. They go into the market at least once a month. They seldom go in November and December.

Q. So during a period of ten months you have four to six buyers that come down here from New York, is it?

A. No, sir. Our buyers go to New York and return.

Q. Oh, your buyers go to New York and buy your merchandise and return?

A. That's right.

[fol. 792] Q. So that means four to six round trips every, well we might say every year, because they don't travel two months out of the year.

A. Four to six round trips every month, out of ten months. Four to six people I mean, go once a month.

Q. Go to New York once a month?

A. That's right.

Q. Four to six people go to New York?

A. Once a month, ten months out of the year.

Q. Now I have it. I am sorry. Now, I think you said they ride the trains exclusively?

A. That's right, sir.

Q. Don't they use the air at all, and if not, why?

A. Mostly the buyers are middle aged women and usually one man goes with them, so we want to keep the group together, and it's more convenient to go by train.

Q. Now, you spoke of buyers from other department stores in Durham, did you not?

A. Yes, sir.

Q. Do you know how frequently they ride the train?

A. I couldn't say to the number of times they go. I said before they go into the market seasonably, whenever the season changes, and they are seen on the trains our buyers go on, and I said they are usually the same.

Q. You don't know what that amounts to though, do you? [fol. 793] A. No, sir.

Q. Do you know how many of those people ride the airlines?

A. No, sir. I do not.

Q. Thank you very much.

Redirect examination.

By Mr. Jones:

Q. One more question, Mr. Jones. Ellis Stone sends about as many buyers up there as the others, do they not?

A. Yes, sir. They will send more.

Q. They will send more?

A. They will send more when Talheimer's get their new building.

Q. I believe Ellis Stone has been taken over by Talheimer's?

A. That's right, sir.

Q. That's all.

Exam. Gibbons: The witness may be excused.

[fol. 794] WILLIAM R. BELFIELD having been duly sworn, testified as follows:

Direct examination.

By Mr. Dixon:

Q. Please state your name, residence, and occupation?

A. My number is—name is W. R. Belfield; I am General Industrial Agent, Southern Railway Lines. My office is in Charlotte, North Carolina.

Q. Are you the same W. R. Belfield who testified in the hearing on these trains before the Utilities Commission of North Carolina?

A. I am.

Q. Is your testimony shown on pages 351 through 371 of the State Commission transcript?

A. Yes, sir.

[fol. 795] Q. Mr. Belfield, if you were asked the same questions today that you were asked on October 1959, with respect to the effect of the passenger service on industrial development on this line and elsewhere, would

there be any difference in the answers you have given in the State Commission case?

A. None at all.

Q. Have you been in the Hearing Room since last Tuesday, and have you heard the testimony of the various witnesses in this proceeding?

A. Yes, sir.

Q. Have any of those witnesses said anything that would change the answers you gave in the State Commission proceeding?

A. No, sir.

Q. Do you have anything you would like to add to the testimony that you gave before the State Commission?

A. Only that since that time, I have been in touch with a great many industrial prospects. I have furnished them with a great deal of information, and as I have just said, there has been nothing to change my former statements. The industrial growth of this section of the line, the interest in it continues. I have at least three active prospects at this time. One of them I think is referred to in the paper, in the Durham paper this morning. I took that prospect to Durham and I am hopeful that something will come of it. You never know until you get to the end of [fol. 796] the line, but I repeat again that what I have said before, and that is to the effect that the presence or non-presence of passenger transportation, rail passenger transportation, has little or no inference on the decision of an industry to locate in a given town.

Q. Thank you, sir. That's all I have.

Exam. Gibbons: Cross examination is in order.

Cross examination.

By Mr. Burns:

Q. One of the questions you were asked before the State Commission was about the Southern's acquisition of the A & EC Railroad from Greensboro to Morehead City?

A. Yes, sir.

Q. And I believe you said, and correct me if I'm wrong,

is that that had given additional impetus to the industrial growth of the area served by trains 13 and 16?

A. We stated that we expected it would, yes.

Q. Do you provide passenger service over that segment of the line?

A. No, sir.

Q. But you do a substantial amount of freight business, do you not?

A. It's growing, yes.

Q. Do you know whether or not your expenses on that segment of the line of handling freight are as high as 50% of your gross revenues?

A. I wouldn't know, sir.

[fol. 797] Q. It is a fact that substantial things have happened on that segment of the line which will increase the freight moving in that direction. Is that not true?

A. I'll say this. That there seems to be, the port facilities at Morehead City have been improved. There will be further improvements if the recommendations of the Ports Authority are adopted.

Q. By that do you mean the ICC's Examiner's report?

A. No. I am talking about—the ICC Examiner's report wherein he recommended that circuit rates be made equal with Wilmington, I think that will have a very beneficial effect.

Q. What way does your railroad have in getting to Morehead City except over the segment of line running between Greensboro and Goldsboro?

A. None.

Q. That's all the questions I have.

By Mr. Bryant:

Q. Mr. Belfield, I understood you to say that the freight business is growing on this line?

A. On the A & EC?

Q. I am speaking of this route, Greensboro to Goldsboro.

A. I said that the interests of industrial prospects continues excellent along this section of the line.

Q. When you say that the freight business is growing, you are speaking now as compared with the time that you testified before?

[fol. 798] A. I am not speaking of the freight business. I am speaking of the interest in this segment of the line. I say, if it continues—

Q. I am trying to get the exact quotation. I understood you to say the freight business is growing. Did you say that?

A. I don't recall. I meant to say that the interest of the industrial development people continues to be excellent on this segment of the railroad.

Q. And does that show up in your freight, amount of freight hauled?

A. The interest doesn't show up in the amount of freight hauled until we have a plant located as the result of that.

Q. Since you have testified here before, when this matter was before the Commission, you do now have this direct line from Greensboro. to Morehead City, do you not?

A. We had it then.

Q. And at Morehead City there is located the North Carolina port?

A. Yes.

Q. To deep water?

A. Yes.

Q. Also, do you have any camps located between Goldsboro and Morehead City?

A. Seymour Johnson, outside of Goldsboro.

Q. That's east of Goldsboro, I believe?

[fol. 799] A. That's on the Atlantic Coastline Railroad.

Q. What else?

A. We have Cherry Point, which is a marine air station at Havelock.

Q. What else?

A. We have, we have just started operation of the Camp Lejeune, near Jacksonville—

Q. For the record, what is Camp Lejeune?

A. It's the marine training station.

Q. Isn't that the largest marine training station in the United States?

A. I have heard that.

Q. And for the record, also, what is at Cherry Point?

A. That is the marine air station.

Q. The marine air station, and that too is one of the largest marine air stations in the United States, is it not?

A. It is certainly substantial in size. Yes, sir.

Q. In addition to that, Mr. Belfield, is it not a fact that since you testified before, there has been a substantial growth in industry in the Burlington area?

A. Since I testified before, I know that the Willard Company has moved in.

Q. Have not other companies moved in, too, and has not the Burlington industrial area increased in size and volume of manufacturing?

[fol. 800] A. The Burlington area, speaking of Burlington alone, there has not been, you understand that our reporting of industries we consider in our records only pretty substantial size things that probably have some freight.

Q. Has the freight business in and out of Burlington increased or decreased since the last hearing?

A. I haven't quite finished answering the first question, but if you want to go on with that—

Q. I beg your pardon. I did not mean to interrupt you. Finish your question, please.

A. The only one I have got in my records is Willard Industries, because there may have been others, but they may have been inconsequential to the railroad's business.

Q. My question which I did not intend to interrupt you with, but which I now ask you, is whether or not the freight business in and out of the Burlington area hauled by the Southern Railway Company has increased or decreased since you testified before the Commission in this case?

A. I don't have those records.

Q. Do you know whether it has increased in the Durham area?

A. I don't have the station records with me, sir. I would not know. I know we have had industrial activity in Durham and interest in Durham.

Q. Don't you know, as a matter of fact, that the freight shipments out of Durham and in Durham have increased [fol. 801] during the past two years?

A. I don't have those records, sir. I don't look at those records as a part of my job.

Q. What is your function? What is your duty with the railroad company, Mr. Belfield?

A. My duty is to promote the industrial development along the lines of the Southern Railway System, and in North Carolina, South Carolina, Virginia and a part of Georgia.

Q. All right, now. I ask you, sir, if in your duties as Industrial Promotion Agent, whether you have promoted, whether any new industries have been established in either Durham or the Burlington area in the past two years?

A. I can tell you what has been established in those two areas in the past two years.

Q. I don't mean to cut you off. I am simply trying to find out from you whether or not there has been any increase in the industrial activity in those two areas in the past two years?

A. I can give you the answer to that in accordance to what records we have, but we keep records of those who possibly will have freight business. In the Durham area in 1960 we had an expansion of a Southern Air Company, with an investment of \$55,000. We had an expansion of the Durham Distributing Company's activities. That's a beer distributor. We had an expansion of the Dillon Bar [fol. 802] Septic Tank Service. We had a Home Building Supply Company, building and hardware distributors. We had Milbourne Mills, a very substantial investment in 1960. This is Durham, now. In 1961, the Owens-Illinois Glass Company, which makes molds for glass containers and a new industry, which is under construction. We had the Mike Roberts Colored Products Company, which makes post cards principally, which is a new one. And I think I mentioned the Sta Rite Tank Company.

Now Burlington, we had Willard Industries, Inc., which is a bronze worker. I think that should answer your question.

Q. Were there any others in the Burlington area?

A. I said in Burlington Willard was the only one I had a record of.

Q. Have you given us the ones which were on the Southern lines?

A. No. Just in the town.

Q. I believe that's all.

By Mr. Holton:

Q. I would like to ask Mr. Belfield a question, if I may. Mr. Belfield, do you have any figures now regarding the impact of, say, a hundred new employees that these industries bring into the area. That's dollar-wise figures?

A. There are figures to that effect put out by the United States Chamber of Commerce. About two or three years ago they estimate that one job means so many new automobiles [fol. 803] and so forth. I know of those figures. I don't have them with me.

Q. Would they be available by you?

A. I would be glad to send them to you, if you'd like me to. If you want them in this record, I can't get them.

Q. Would you object to putting them in this record?

Mr. Dixon: Yes, we will. We don't want them in this record.

The Witness: You can get them at almost any Chamber of Commerce. I know you get them here in Raleigh.

By Mr. Holton:

Q. Mr. Belfield, I believe you stated that you service a place called Camp Lejeune. The Southern Railway serves them?

A. The Camp Lejeune railroad services them.

Q. What is the Camp Lejeune railroad?

A. It's a subsidiary company controlled by the Southern Railway. It's part of the system.

Q. You mean the Southern Railway owns the Southern— the Camp Lejeune Railroad?

A. I don't want to get that technical. I can't tell you exactly what the set up is. I know that it is operated by the A & EC Railroad.

Q. What I am trying to find out, say, last year, the government was shipping a hundred pounds of military material from Camp Lejeune, how would A & EC Railroad [fol. 804] get possession of it?

A. Last year?

Q. Yes.

A. Well, the A & EC Railroad last year didn't serve Camp Lejeune.

Q. How would it be delivered today?

A. I can't get into that. That's not my field.

Q. Isn't it a fact that the Southern Railway performs a switching service at that Camp Lejeune military installation today?

A. I don't know that to be a fact, because I am not familiar with the details of the operation down there.

Q. Will you agree that there is a petition pending before the Interstate Commerce Commission requesting a switching service?

A. It hasn't come to my attention.

Q. Is such a petition pending?

A. I don't know, sir.

Q. Then last year the military switching service delivered cars to Havelock and gave it to the A & EC Railroad. Is that right?

A. The A & EC Railroad operates through Havelock. I don't know how or who performs the switching.

Q. If today the Southern Railway was furnishing switching service at Camp Lejeune, it would be in effect deriving [fol. 805] additional revenue and would the effect be, would in effect have the own representatives of the military base look out for their interests on solicitation and a switching service?

A. I can't answer that, sir, because I don't get into that angle.

Q. Suppose I told you it was so?

A. I would listen, but I wouldn't know it was so, because I have no way of checking it.

Q. Would you be surprised to hear it's so?

A. I am surprised by a lot of things.

Q. I don't believe I have any further questions.

Exam. Gibbons: You didn't make any specific requests for information, did you?

Mr. Holton: Regarding the employees? No, sir. I did not.

Exam. Gibbons: Do you have a question, Mr. Bryson?

Mr. Bryson: No, sir.

Exam. Gibbons: Any further cross examination?

(No response.)

Exam. Gibbons: If not, the witness may be excused.

PRESENT SCHEDULE

Greensboro-Goldsboro, N. C., Truck Route

Trip: Greensboro-Goldsboro

Daily
Exc.
Sun

12:30 AM
2:45
3:30
4:50 AM

Lv. Greensboro
Ar. Raleigh
Lv. Raleigh
Selma*
Ar. Goldsboro

Ar.
Lv.
Ar.
Lv.
Lv.

Daily
Exc.
Sun

1:30 AM
11:15 PM
10:15 PM
9:15 PM
8:30 PM

* - Works Selma only on Westbound trip on
advice of Agent at Goldsboro, NC

Trip: Greensboro-Raleigh-Durham

Daily
Exc.
Sat & Sun

1:15 AM
3:30 AM
4:00 AM
-
4:45 AM

Daily
Exc.
Sat & Sun

4:30 PM
-
-
-
6:00 PM

Lv. Greensboro
Ar. Raleigh
Lv. Raleigh
Burlington
Ar. Durham

Daily
Exc.
Sat & Sun

8:00 PM
-
-
-
6:30 PM

Daily
Exc.
Sat & Sun

4:00 PM
-
-
3:00 PM
2:05 PM

Sat & Sun

2:00 AM
4:15 AM
4:45 AM
5:30 AM

Lv. Greensboro
Ar. Raleigh
Lv. Raleigh
Ar. Durham

Sat & Sun

8:15 AM
-
-
6:45 AM

Trip: Greensboro-Burlington

Daily
Exc.
Sun

8:15 AM
9:00 AM
9:10 AM
9:50 AM

Lv. Greensboro
Ar. Burlington
Lv. Burlington
Ar. Greensboro

Ar.
Lv.
Ar.
Lv.

Daily
Exc.
Sun

7:30 PM
6:30 PM
8:30 PM
7:45 PM

[61,806]

BEFORE THE INTERSTATE COMMERCE COMMISSION
EXHIBIT H-1

PROPOSED SCHEDULE

Greensboro-Goldsboro, N. C., Truck Route

Trip "A"

Daily
Exc.
Sun

12:00 M
2:15 AM
3:00 AM
3:15 AM
3:40 AM
-
4:30 AM
4:45
5:05 AM

Lv. Greensboro Ar.
Ar. Raleigh Lv.
Lv. Raleigh Ar.
Garner
Clayton
Selma
Pine Level
Princeton
Ar. Goldsboro Lv.

Daily
Exc.
Sun

1:45 AM
11:30 PM
10:45 PM
-
10:15 PM
9:15 PM
-
-
8:30 PM

Trip "B"

Daily
Exc.
Sat & Sun

1:15 AM 2:30 PM
- -
3:30 -
4:00 -
4:45 AM 4:00 PM

Lv. Greensboro Ar.
Hillsboro
Ar. Raleigh Lv.
Lv. Raleigh Ar.
Ar. Durham Lv.

Daily
Exc.
S&S

2:00P 7:35P
1:00P -
- -
- -
12:30P 6:05P

Daily
Exc.
S&S

7:15A
-
-
-
5:45A

Sat
and
Sun

Trip "C"

Daily
Exc.
Sat & Sun

8:00 AM
8:30 AM
8:45 AM
9:15 AM
9:30 AM
9:45 AM
10:15 AM

Satur-
day

8:00 AM Lv.
-
-
-
-
-
8:45 AM Ar.

Greensboro Ar.
Gibsonville
Ar. Burlington Lv.
Burlington Ar.
Haw River
Mebane
Burlington Lv.

Daily
Exc.
Sat & Sun

7:15 PM
6:50 PM
6:30 PM
6:00 PM
-
5:30
5:00 PM

Satur-
day

4:30 PM
-
-
-
-
-
3:45 PM

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-2

[fol. 807]

VOLUME - SHIPMENTS
MAR. 1960 - FEB. 1961

<u>Office</u>	<u>Average Monthly Shipments</u>	<u>Trains Nos. 12 & 14</u>
Cibola	238	238
Elon College } Burlington }	8,502	
Law River	40	40
Hobbs	440	440
Hillsboro	108	108
Durham	9,220	
Raleigh	4,072	
Garnett	88	88
Clayton	107	107
Selma	188	
Pine Level	36	36
Princeton	25	25
Goldstone	930	
TOTAL	23,923	1,000

[fol. 808]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-3

EXHIBIT H-4

SOUTHERN RAILWAY COMPANY

PASSENGERS HANDLED ON TRAIN 13 (OPERATING DAILY GOLDSBORO, N. C. TO GREENSBORO, N. C.)
JANUARY THRU MAY 1961 - 151 TRIPS

FROM

TO

	On	D/A *	Off	D/A *	Rose, N. C.	Princeton, N. C.	Pine Level, N. C.	Selma, N. C.	Wilsons Mills, N. C.	Clayton, N. C.	Garner, N. C.	Raleigh, N. C.	Cary, N. C.	Morrisville, N. C.	Durham, N. C.	Glenn, N. C.	Hillsboro, N. C.	Efland, N. C.	Mebane, N. C.	Hav River, N. C.	Graham, N. C.	Burlington, N. C.	Elon College, N. C.	Gibsonville, N. C.	McLeansville, N. C.	Greensboro, N. C.
Goldsboro, N. C.	1,292	8.6	-	-	64	5	204	3	2	162	563	2	106	6	1	6	168									
Rose, N. C.	-	-	-	-																						
Princeton, N. C.	41	.3	64	.4			21				7		8													
Pine Level, N. C.	5	-	5	-					1				3													
Selma, N. C.	203	1.3	225	1.5				4	47			65	40		11											
Wilsons Mills, N. C.	12	.1	7	-							3	6	5													
Clayton, N. C.	30	.2	50	.3							15	6	6													
Garner, N. C.	24	.2	165	1.1							5	5	14													
Raleigh, N. C.	565	3.7	661	4.4								25	210			10	1					9				310
Cary, N. C.	2	-	32	.2									2													
Morrisville, N. C.	-	-	-	-																						
Durham, N. C.	1,515	10.0	394	2.6											4	110		17		1	26	4				1,353
Glenn, N. C.	1	-	4	-																						
Hillsboro, N. C.	62	.4	127	.8																						
Efland, N. C.	-	-	-	-																						
Mebane, N. C.	59	.4	28	.2																						
Hav River, N. C.	3	-	1	-																						
Graham, N. C.	2	-	8	.1																						
Burlington, N. C.	560	3.7	90	.6																						
Elon College, N. C.	8	.1	5	-																						
Gibsonville, N. C.	-	-	35	.2																						
McLeansville, N. C.	-	-	-	-																						
Greensboro, N. C.	-	-	2,483	16.4																						
Total	4,384	29.0	4,384	29.0	-	64	5	225	7	50	165	661	32	-	394	4	127	-	28	1	8	90	5	35	-	2,483

* - Daily Average
151 Days

PASSENGERS HANDLED ON TRAIN 16 (OPERATING DAILY GREENSBORO, N. C. TO GOLDSBORO, N. C.)
JANUARY THRU MAY 1961 - 151 TRIPS

FROM

TO

	On	D/A*	Off	D/A*	McLeansville, N. C.	Gibsonville, N. C.	Elon College, N. C.	Burlington, N. C.	Graham, N. C.	Haw River, N. C.	Mebane, N. C.	Efland, N. C.	Hillsboro, N. C.	Glenn, N. C.	Durham, N. C.	Morrisville, N. C.	Cary, N. C.	Raleigh, N. C.	Garner, N. C.	Clayton, N. C.	Wilsons Mills, N. C.	Selma, N. C.	Pine Level, N. C.	Princeton, N. C.	Rose, N. C.	Goldsboro, N. C.
Greensboro, N. C.	2,004	13.3	-	-	3	40	441	1	5	21	9	6	1,111					235	1	15	4					112
McLeansville, N. C.	-	-	-	-														3								
Gibsonville, N. C.	3	-	3	-																						
Elon College, N. C.	5	-	40	.3			5																			
Burlington, N. C.	26	.2	446	3.0						10	5				3			2			4					2
Graham, N. C.	-	-	1	.2																						
Haw River, N. C.	2	-	5	-											1			1								
Mebane, N. C.	25	.2	31	.2							1	4			9		3	6		2						
Efland, N. C.	1	-	1	-													1									
Hillsboro, N. C.	38	.3	18	.1											22			4				6				6
Glenn, N. C.	2	-	6	-											2											
Durham, N. C.	657	4.4	1,148	7.6												2		580		7	7	19	2	2		38
Morrisville, N. C.	-	-	2	-																						
Cary, N. C.	6	-	4	-														6								
Raleigh, N. C.	910	6.0	837	5.5															10	342	2	13	1	1		541
Garner, N. C.	230	1.5	10	.1																6		64				160
Clayton, N. C.	129	.9	358	2.4																	4	122	1	1		1
Wilsons Mills, N. C.	62	.4	13	.1																				62		
Selma, N. C.	87	.6	243	1.6																			2	9		76
Pine Level, N. C.	1	-	6	-																				1		
Princeton, N. C.	362	2.4	80	.5																						362
Rose, N. C.	-	-	-	-																						
Goldsboro, N. C.	-	-	1,298	8.6																						

Total 4,550 30.1 4,550 30.1 - 3 40 446 1 5 31 1 18 6 1,148 2 4 837 10 358 13 243 6 80 - 1,298

* Daily Average
151 Days

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-5

SOUTHERN RAILWAY COMPANY

Passenger Traffic Statistics

Trains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.

January Thru May 1961

[fol. 811]

	<u>Trains 13 and 16</u>	<u>Train No. 13</u>	<u>Train No. 16</u>
Number of Trips Operated	302	151	151
Trip Mileage	129	129	129
Total Train Miles Operated	38,958	19,479	19,479
Total Number of Passengers Carried	8,934	4,384	4,550
Total Passenger Miles	388,334	207,823	180,511
Total Passenger Revenue	\$10,653	\$5,773	\$4,880
Average Number of Passengers Per Trip	29.6	29.0	30.1
Average Miles Per Passenger	43.5	47.4	39.7
Average Revenue Per Passenger (Cents)	119.241	131.683	107.253
Average Passenger Revenue Per Train Mile (Cents)	27.345	29.637	25.053
Average Passenger Miles Per Train Mile	9.97	10.67	9.27

608

BEFORE THE INTERSTATE COMMERCE COMMISSION

SOUTHERN RAILWAY COMPANY

EXHIBIT H-6

Trains 13 and 16 Operating Between Greensboro, N. C. and Goldsboro, N. C.Passenger Traffic Statistics

Year	Train No. 13					Train No. 16					Total - Trains Nos. 13 and 16				
	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip	No. of Trips	No. of Pass.	Passenger Revenue	Ave. No. of Pass. Per Trip	Average Pass. Rev. Per Trip
1948	366	34,094	\$35,373	93.15	\$96.65	366	22,645	\$25,161	61.87	\$68.75	732	56,739	\$60,534	77.51	\$82.70
1949	365	24,184	30,625	66.26	83.90	365	15,904	19,732	43.57	54.06	730	40,088	50,357	54.92	68.98
1950	325	15,578	21,595	47.93	66.45	325	11,046	14,142	33.99	43.51	650	26,624	35,737	40.96	54.96
1951	365	16,904	24,685	46.31	67.63	365	12,265	15,772	33.60	43.21	730	29,169	40,457	39.96	55.42
1952	366	14,537	22,549	39.72	61.61	366	11,138	15,628	30.43	42.70	732	25,675	38,177	35.08	52.15
1953	365	12,187	18,521	33.39	50.74	365	9,921	14,131	27.18	38.72	730	22,108	32,652	30.28	49.73
1954	365	10,437	15,792	28.60	43.27	365	8,433	11,869	23.10	32.52	730	18,870	27,661	25.85	37.89
1955	365	10,847	16,344	29.72	44.78	365	9,601	13,279	26.30	36.38	730	20,448	29,623	28.01	40.58
1956	366	10,915	17,389	29.82	47.51	366	9,317	12,876	25.46	35.18	732	20,232	30,265	27.64	41.35
1957	365	7,964	12,726	21.82	34.87	365	7,794	11,117	21.35	30.46	730	15,758	23,843	21.59	32.66
1958	365	8,082	12,942	22.14	35.46	365	8,337	12,213	22.84	33.46	730	16,419	25,155	22.49	34.46
1959	365	6,462	9,383	17.70	25.71	365	7,789	10,456	21.34	28.65	730	14,251	19,839	19.52	27.18
1960	366	7,076	10,394	19.33	28.40	366	7,700	10,741	21.04	29.35	732	14,776	21,135	20.19	28.87
5 Mos. 1961	151	4,384	5,773	29.03	38.23	151	4,550	4,880	30.13	32.32	302	8,934	10,653	29.58	35.27

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-7

SOUTHERN RAILWAY COMPANY

Operating Results of Passenger Trains Nos. 13 and 16

Greensboro, N. C. to Goldsboro, N. C.

January thru May 1961

	Train No. 13	Train No. 16	Total
Revenues:			
Passenger	\$ 5,773	\$ 4,880	\$10,653
Express	2,300	2,397	4,697
Miscellaneous	-	140	140
Total Revenues	\$ 8,073	\$ 7,417	\$15,490
Direct Expenses:			
Wages, Train and Engine Crews	\$19,262	\$17,411	\$36,673
Payroll Tax, R.R. Retirement & Unemp. Ins.	1,050	1,050	2,100
Train Fuel	2,489	2,489	4,978
Injuries to Persons	3,500	-	3,500
Pullman Co. Net Loss	572	572	1,144
Engine House Expenses	326	326	652
Passenger Locomotive Lubricants	403	403	806
" " Other Supplies	87	87	174
" " Repairs	4,609	4,609	9,218
" " Train Cars-CHLW & Icing	1,300	1,291	2,591
" " " -Lubricants	76	74	150
" " " -Other Expenses	172	170	342
" " " -Repairs	2,035	2,017	4,052
" " " -Air Conditioning	877	877	1,754
Goldsboro Union Station	1,049	1,049	2,098
Rental of Equipment	45	44	89
Total Direct Expenses	\$37,852	\$32,469	\$70,321
Direct Expenses in Excess of Revenues	\$29,779	\$25,052	\$54,831
Ratio - Total Direct Expenses to Total Revenues			454
i.e. \$4.54 was expended to earn a revenue dollar.			

January thru May 1961

	Train No. 13	Train No. 16	Total
Revenues:			
Passenger	\$ 5,773	\$ 4,880	\$10,653
Express	2,300	2,397	4,697
Miscellaneous	-	140	140
Total Revenues	\$ 8,073	\$ 7,417	\$15,490
Direct Expenses:			
Wages, Train and Engine Crews	\$19,262	\$17,411	\$36,673
Payroll Tax, R.R. Retirement & Unemp. Ins.	1,050	1,050	2,100
Train Fuel	2,489	2,489	4,978
Injuries to Persons	3,500	-	3,500
Pullman Co. Mat Loss	572	572	1,144
Engine House Expenses	326	326	652
Passenger Locomotive Lubricants	403	403	806
" " Other Supplies	87	87	174
" " Repairs	4,609	4,609	9,218
" " Train Cars-CHW & Icing	1,300	1,291	2,591
" " " -Lubricants	76	74	150
" " " -Other Expenses	172	170	342
" " " -Repairs	2,035	2,017	4,052
" " " -Air Conditioning	877	877	1,754
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Direct Expenses in Excess of Revenues	\$29,779	\$25,052	\$54,831
Ratio - Total Direct Expenses to Total Revenues			454
i.e. \$4.54 was expended to earn a revenue dollar.			

Items of Expense Not Included:

Maintenance of Way-Tracks and Structures
 " " -Supervision-Depreciation-Retirements
 Maintenance of Equipment-Supervision-Depreciation-Retirements
 All Traffic Expenses
 Transportation-Supervision-Train Dispatching and numerous
 Overhead Accounts
 All General Expenses
 All Taxes - except Payroll
 All Fixed Charges, i.e., Bond Interest, etc.

[fol. 813]

[fol. 814]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-8

SOUTHERN RAILWAY SYSTEM

**FEEDER VALUE OF TRAINS 13 AND 16, OPERATING
BETWEEN GREENSBORO, N. C. AND GOLDSBORO, N. C.
ACCRUING TO THE SOUTHERN RAILWAY SYSTEM**

**System Off Line Revenue
Less 50% Operating Costs**

**January
Thru
May 1961
\$34,533
17,266**

**Net Revenue Accruing to Southern Railway System
For Off Line Passengers From Trains 13 and 16**

\$17,267

EXHIBIT H-9

SOUTHERN RAILWAY COMPANY

GENERAL BALANCE SHEET AS OF APRIL 30, 1961

ASSETS

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT ASSETS:

701 Cash	\$ 14,681,471
702 Temporary cash investments	32,072,000
703 Special deposits	601,327
706 Net balances receivable from agents and conductors	4,809,856
707 Miscellaneous accounts receivable	10,441,206
708 Interest and dividends receivable	492,359
709 Accrued accounts receivable	3,422,877
710 Working fund advances	446,128
711 Prepayments	2,681,280
712 Material and supplies	6,917,388
713 Other current assets	154,321
Total current assets	\$ 76,729,214

SPECIAL FUNDS:

715 Sinking funds	\$ 1,281
716 Capital and other reserve funds	306,251
717 Insurance and other funds	550,676
Total special funds	\$ 858,208

INVESTMENTS:

721 Investments in affiliated companies	\$110,418,026
722 Other investments	473,862
Total investments	\$110,891,888

PROPERTIES:

731 Road and equipment property	\$776,009,918
732 Improvements on leased property	50,045,570
733 Acquisition adjustment	(91,377)
734 Donations and grants - Cr.	(14,607,241)
Total transportation property	\$807,356,870
735 Accrued depreciation - Road and Equipment	(140,124,901)
736 Amortization of defense projects - Road and Equipment	(30,650,262)
Total transportation property less recorded depreciation and amortization	\$636,581,707
737 Miscellaneous physical property	4,588,996
738 Accrued depreciation - Miscellaneous physical property	(36,023)
Miscellaneous physical property less recorded depreciation	4,552,973
Total properties less recorded depreciation and amortization	\$641,134,680

OTHER ASSETS AND DEFERRED CHARGES:

741 Other assets	\$ 3,404,375
742 Unamortized discount on long-term debt	672,580
743 Other deferred charges	3,693,246
Total other assets and deferred charges	\$ 7,770,201

TOTAL ASSETS \$837,455,190

CURRENT LIABILITIES:

752 Traffic and car-service balances - Cr.	\$ 1,717,182
753 Audited accounts and wages payable	8,578,350
754 Miscellaneous accounts payable	4,189,597
755 Interest matured unpaid	381,710
756 Dividends matured unpaid	223,159
757 Unmatured interest accrued	2,565,519
758 Unmatured dividends declared	5,995,611
759 Accrued accounts payable	8,031,383
760 Federal income taxes accrued	16,982,503
761 Other taxes accrued	5,274,177
763 Other current liabilities	1,716,449
Total current liabilities (exclusive of long-term debt due within one year)	\$ 55,655,640

LONG-TERM DEBT DUE WITHIN ONE YEAR:

764 Equipment obligations and other debt	\$ 12,682,596
--	---------------

LONG-TERM DEBT:

	Total issued	Held by or for Company	
765 Funded debt unmatured	\$181,467,700	\$24,339,200	\$157,128,500
766 Equipment obligations	60,725,845	-0-	60,725,845
769 Amounts payable to affiliated companies			718,662
Total long-term debt			\$218,573,307

RESERVES:

773 Equalization reserves	\$ 353,289
774 Casualty and other reserves	5,929,630
Total reserves	\$ 6,282,919

OTHER LIABILITIES AND DEFERRED CREDITS:

782 Other liabilities	\$ 3,444,899
784 Other deferred credits	2,329,412
785 Accrued depreciation - Leased property	7,268,152
Total other liabilities and deferred credits	\$ 13,042,463

SHAREHOLDERS' EQUITY:

	Total issued	Held by or for Company	
Capital stock (Par or stated value):			
791 Capital stock issued	\$190,362,300	\$ 1,916,000	\$188,446,300
Capital surplus:			
795 Paid-in surplus			\$ 319,412
796 Other capital surplus			288,927
Total capital surplus			\$ 608,339
Retained income:			
797 Retained income - Appropriated			\$ 3,410,288
798 Retained income - Unappropriated			338,753,336
Total retained income			\$342,163,624
Total shareholders' equity			\$531,218,263

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY \$837,455,190

SOUTHERN RAILWAY COMPANY

Income Account for Four Months ended April 30, 1961

I. OPERATING INCOME:

(A) RAILWAY OPERATING INCOME:

501 Railway operating revenues.....	\$82,281,054
531 Railway operating expenses.....	60,862,792
Net revenue from railway operations.....	21,418,262
532 Railway tax accruals.....	8,810,497
Railway operating income.....	12,607,765

(B) RENT INCOME:

504 Rent from locomotives.....	808,754
505 Rent from passenger-train cars.....	822,788
507 Rent from work equipment.....	33,058
508 Joint facility rent income.....	366,148
Total rent income.....	2,030,748

(C) RENTS PAYABLE:

536 Hire of freight cars-Debit balance.....	3,147,916
537 Rent for locomotives.....	1,225,622
538 Rent for passenger-train cars.....	468,630
540 Rent for work equipment.....	31,995
541 Joint facility rents.....	1,098,254
Total rents payable.....	5,972,417
Net rents - Debit.....	3,941,669
Net railway operating income.....	8,666,096

II. OTHER INCOME:

509 Income from lease of road and equipment.....	11,847
510 Miscellaneous rent income.....	212,111
511 Income from nonoperating property.....	(41,365)
513 Dividend income.....	1,123,255
514 Interest income.....	651,139
516 Income from sinking and other reserve funds.....	7,746
519 Miscellaneous income.....	25,867
Total other income.....	1,990,600
Total income.....	10,656,696

III. MISCELLANEOUS DEDUCTIONS FROM INCOME:

543 Miscellaneous rents.....	110,664
544 Miscellaneous tax accruals.....	154
551 Miscellaneous income charges.....	121,910
Total miscellaneous deductions.....	232,728
Income available for fixed charges.....	10,423,968

IV. FIXED CHARGES:

542 Rent for leased roads and equipment.....	630,774
546 Interest on funded debt:	
(A) Fixed interest.....	3,359,717
548 Amortization of discount on funded debt.....	32,977
Total fixed charges.....	4,023,468
Income after fixed charges.....	6,400,500

VI. DISPOSITION OF NET INCOME:

602 Balance of income transferred to retained income.....	6,400,500
---	-----------

IOC FINANCE DOCKET 21563

WITNESS: J. V. E144

**ESTIMATED BENEFITS TO BE DERIVED BY
REMOVAL OF PASSENGER SERVICE, BETWEEN
GREENSBORO, N.C. AND GOLDSBORO, N.C.**

<u>Station</u>	<u>Annual Saving in Maintenance</u>	<u>Annual Rental for lease of Property</u>	<u>Sale of Property</u>	<u>Annual Savings on Heating and Utilities</u>
Wilmington	\$ 95	\$ -	-	\$ 9
High College	120	-	-	10
Wilmington	725	2,250	-	300
Graham	-	-	-	-
Law River	-	-	-	-
Mebane	-	-	-	-
Wilmington	51	-	-	4
*Durham	2,090	-	-	1,425
Wilmington	-	-	-	-
*City	-	-	-	-
Raleigh	855	4,570	-	2,300
Garnet	-	-	-	-
Clayton	40	-	-	-
*Salma	-	-	-	-
Pine Level	-	-	-	-
Princeton	70	-	-	-
*Goldsboro	-	-	-	-
	<u>\$4,046</u>	<u>\$6,820</u>		<u>\$4,149</u>

*Jointly Owned

NOTE: Total cost of converting passenger station to freight station - Raleigh \$38,800

[fol. 817]
BEFORE THE INTERSTATE COMMERCE
EXHIBIT H-11

GREENSBORO, N.C. AND GOLDSBORO, N.C.

<u>Station</u>	<u>Annual Saving in Maintenance</u>	<u>Annual Rental for lease of Property</u>	<u>Sale of Property</u>	<u>Annual Savings on Heating and Utilities</u>
Gibsonville	\$ 95	\$ -	-	\$ 5
Hick College	120	-	-	10
Roxington	725	2,250	-	500
Graham	-	-	-	-
Bar River	-	-	-	-
Noteno	-	-	-	-
Hillsboro	51	-	-	4
*Durham	2,090	-	-	1,425
Marionville	-	-	-	-
*Cary	-	-	-	-
Raleigh	855	4,570	-	2,800
Garner	-	-	-	-
*Clayton	40	-	-	-
*Salma	-	-	-	-
Pine Level	-	-	-	-
Princeton	70	-	-	5
*Goldsboro	-	-	-	-
	<u>\$4,046</u>	<u>\$6,820</u>	-	<u>\$4,149</u>
*Jointly Owned				

NOTE: Total cost of converting passenger station to freight station - Raleigh \$38,800

SUMMARY

Annual Saving in Maintenance	\$ 4,046
Annual Rental for Lease of Property	6,820
Annual Saving on Heating & Utilities	4,149
Total Benefits	\$15,015

[fol. 817]
BEFORE THE INTERSTATE COMMERCE COMMISSION
EXHIBIT H-11

Daily Trains eastern Standard Time				Daily Trains eastern Standard Time			
AM	PM	AM	PM	AM	PM	AM	PM
9 00	3 15	12 30	6 30	9 00	3 15	12 30	6 30
9 25	3 40	1 00	7 00	9 25	3 40	1 00	7 00
9 50	4 05	1 25	7 25	9 50	4 05	1 25	7 25
10 15	4 30	1 50	7 50	10 15	4 30	1 50	7 50
10 40	4 55	2 15	8 15	10 40	4 55	2 15	8 15
11 05	5 20	2 40	8 40	11 05	5 20	2 40	8 40
11 30	5 45	3 05	9 05	11 30	5 45	3 05	9 05
11 55	6 10	3 30	9 30	11 55	6 10	3 30	9 30
12 20	6 35	3 55	9 55	12 20	6 35	3 55	9 55
12 45	7 00	4 20	10 20	12 45	7 00	4 20	10 20
1 10	7 25	4 45	10 45	1 10	7 25	4 45	10 45
1 35	7 50	5 10	11 10	1 35	7 50	5 10	11 10
2 00	8 15	5 35	11 35	2 00	8 15	5 35	11 35
2 25	8 40	6 00	12 00	2 25	8 40	6 00	12 00
2 50	9 05	6 25	12 25	2 50	9 05	6 25	12 25
3 15	9 30	6 50	12 50	3 15	9 30	6 50	12 50
3 40	9 55	7 15	1 00	3 40	9 55	7 15	1 00
4 05	10 20	7 40	1 25	4 05	10 20	7 40	1 25
4 30	10 45	8 05	1 50	4 30	10 45	8 05	1 50
4 55	11 10	8 30	2 15	4 55	11 10	8 30	2 15
5 20	11 35	8 55	2 40	5 20	11 35	8 55	2 40
5 45	12 00	9 20	3 05	5 45	12 00	9 20	3 05
6 10	12 25	9 45	3 30	6 10	12 25	9 45	3 30
6 35	12 50	10 10	3 55	6 35	12 50	10 10	3 55
7 00	1 05	10 35	4 20	7 00	1 05	10 35	4 20
7 25	1 30	11 00	4 45	7 25	1 30	11 00	4 45
7 50	1 55	11 25	5 10	7 50	1 55	11 25	5 10
8 15	2 20	11 50	5 35	8 15	2 20	11 50	5 35
8 40	2 45	12 15	6 00	8 40	2 45	12 15	6 00
9 05	3 10	12 40	6 25	9 05	3 10	12 40	6 25
9 30	3 35	1 05	6 50	9 30	3 35	1 05	6 50
9 55	4 00	1 30	7 15	9 55	4 00	1 30	7 15
10 20	4 25	1 55	7 40	10 20	4 25	1 55	7 40
10 45	4 50	2 20	8 05	10 45	4 50	2 20	8 05
11 10	5 15	2 45	8 30	11 10	5 15	2 45	8 30
11 35	5 40	3 10	8 55	11 35	5 40	3 10	8 55
12 00	6 05	3 35	9 20	12 00	6 05	3 35	9 20
12 25	6 30	4 00	9 45	12 25	6 30	4 00	9 45
12 50	6 55	4 25	10 10	12 50	6 55	4 25	10 10
1 05	7 20	4 50	10 35	1 05	7 20	4 50	10 35
1 30	7 45	5 15	11 00	1 30	7 45	5 15	11 00
1 55	8 10	5 40	11 25	1 55	8 10	5 40	11 25
2 20	8 35	6 05	11 50	2 20	8 35	6 05	11 50
2 45	9 00	6 30	12 15	2 45	9 00	6 30	12 15
3 10	9 25	6 55	12 40	3 10	9 25	6 55	12 40
3 35	9 50	7 20	1 05	3 35	9 50	7 20	1 05
4 00	10 15	7 45	1 30	4 00	10 15	7 45	1 30
4 25	10 40	8 10	1 55	4 25	10 40	8 10	1 55
4 50	11 05	8 35	2 20	4 50	11 05	8 35	2 20
5 15	11 30	9 00	2 45	5 15	11 30	9 00	2 45
5 40	11 55	9 25	3 10	5 40	11 55	9 25	3 10
6 05	12 20	9 50	3 35	6 05	12 20	9 50	3 35
6 30	12 45	10 15	4 00	6 30	12 45	10 15	4 00
6 55	1 00	10 40	4 25	6 55	1 00	10 40	4 25
7 20	1 25	11 05	4 50	7 20	1 25	11 05	4 50
7 45	1 50	11 30	5 15	7 45	1 50	11 30	5 15
8 10	2 15	11 55	5 40	8 10	2 15	11 55	5 40
8 35	2 40	12 20	6 05	8 35	2 40	12 20	6 05
9 00	3 05	12 45	6 30	9 00	3 05	12 45	6 30
9 25	3 30	1 00	6 55	9 25	3 30	1 00	6 55
9 50	3 55	1 25	7 20	9 50	3 55	1 25	7 20
10 15	4 20	1 50	7 45	10 15	4 20	1 50	7 45
10 40	4 45	2 15	8 10	10 40	4 45	2 15	8 10
11 05	5 10	2 40	8 35	11 05	5 10	2 40	8 35
11 30	5 35	3 05	9 00	11 30	5 35	3 05	9 00
11 55	6 00	3 30	9 25	11 55	6 00	3 30	9 25
12 20	6 25	3 55	9 50	12 20	6 25	3 55	9 50
12 45	6 50	4 20	10 15	12 45	6 50	4 20	10 15
1 10	7 15	4 45	10 40	1 10	7 15	4 45	10 40
1 35	7 40	5 10	11 05	1 35	7 40	5 10	11 05
2 00	8 05	5 35	11 30	2 00	8 05	5 35	11 30
2 25	8 30	6 00	11 55	2 25	8 30	6 00	11 55
2 50	8 55	6 25	12 20	2 50	8 55	6 25	12 20
3 15	9 20	6 50	12 45	3 15	9 20	6 50	12 45
3 40	9 45	7 15	1 00	3 40	9 45	7 15	1 00
4 05	10 10	7 40	1 25	4 05	10 10	7 40	1 25
4 30	10 35	8 05	1 50	4 30	10 35	8 05	1 50
4 55	11 00	8 30	2 15	4 55	11 00	8 30	2 15
5 20	11 25	8 55	2 40	5 20	11 25	8 55	2 40
5 45	11 50	9 20	3 05	5 45	11 50	9 20	3 05
6 10	12 15	9 45	3 30	6 10	12 15	9 45	3 30
6 35	12 40	10 10	3 55	6 35	12 40	10 10	3 55
7 00	1 05	10 35	4 20	7 00	1 05	10 35	4 20
7 25	1 30	11 00	4 45	7 25	1 30	11 00	4 45
7 50	1 55	11 25	5 10	7 50	1 55	11 25	5 10
8 15	2 20	11 50	5 35	8 15	2 20	11 50	5 35
8 40	2 45	12 15	6 00	8 40	2 45	12 15	6 00
9 05	3 10	12 40	6 25	9 05	3 10	12 40	6 25
9 30	3 35	1 05	6 50	9 30	3 35	1 05	6 50
9 55	4 00	1 30	7 15	9 55	4 00	1 30	7 15
10 20	4 25	1 55	7 40	10 20	4 25	1 55	7 40
10 45	4 50	2 20	8 05	10 45	4 50	2 20	8 05
11 10	5 15	2 45	8 30	11 10	5 15	2 45	8 30
11 35	5 40	3 10	8 55	11 35	5 40	3 10	8 55
12 00	6 05	3 35	9 20	12 00	6 05	3 35	9 20
12 25	6 30	4 00	9 45	12 25	6 30	4 00	9 45
12 50	6 55	4 25	10 10	12 50	6 55	4 25	10 10
1 05	7 20	4 50	10 35	1 05	7 20	4 50	10 35
1 30	7 45	5 15	11 00	1 30	7 45	5 15	11 00
1 55	8 10	5 40	11 25	1 55	8 10	5 40	11 25
2 20	8 35	6 05	11 50	2 20	8 35	6 05	11 50
2 45	9 00	6 30	12 15	2 45	9 00	6 30	12 15
3 10	9 25	6 55	12 40	3 10	9 25	6 55	12 40
3 35	9 50	7 20	1 00	3 35	9 50	7 20	1 00
4 00	10 15	7 45	1 25	4 00	10 15	7 45	1 25
4 25	10 40	8 10	1 50	4 25	10 40	8 10	1 50
4 50	11 05	8 35	2 15	4 50	11 05	8 35	2 15
5 15	11 30	9 00	2 40	5 15	11 30	9 00	2 40
5 40	11 55	9 25	3 05	5 40	11 55	9 25	3 05
6 05	12 20	9 50	3 30	6 05	12 20	9 50	3 30
6 30	12 45	10 15	3 55	6 30	12 45	10 15	3 55
6 55	1 00	10 40	4 20	6 55	1 00	10 40	4 20
7 20	1 25	11 05	4 45	7 20	1 25	11 05	4 45
7 45	1 50	11 30	5 10	7 45	1 50	11 30	5 10
8 10	2 15	11 55	5 35	8 10	2 15	11 55	5 35
8 35	2 40	12 20	6 00	8 35	2 40	12 20	6 00
9 00	3 05	12 45	6 25	9 00	3 05	12 45	6 25
9 25	3 30	1 00	6 50	9 25	3 30	1 00	6 50
9 50	3 55	1 25	7 15	9 50	3 55	1 25	7 15
10 15	4 20	1 50	7 40	10 15	4 20	1 50	7 40
10 40	4 45	2 15	8 05	10 40	4 45	2 15	8 05
11 05	5 10	2 40	8 30	11 05	5 10	2 40	8 30
11 30	5 35	3 05	8 55	11 30	5 35	3 05	8 55
11 55	6 00	3 30	9 20	11 55	6 00	3 30	9 20
12 20	6 25	3 55	9 45	12 20	6 25	3 55	9 45
12 45	6 50	4 20	10 10	12 45	6 50	4 20	10 10
1 10	7 15	4 45	10 35	1 10	7 15	4 45	10 35
1 35	7 40	5 10	11 00	1 35	7 40	5 10	11 00
2 00	8 05	5 35	11 25	2 00	8 05	5 35	11 25
2 25	8 30	6 00	11 50	2 25	8 30	6 00	11 50
2 50	8 55	6 25	12 15	2 50	8 55	6 25	12 15
3 15	9 20	6 50	12 40	3 15	9 20	6 50	12 40
3 40	9 45	7 15	1 00	3 40	9 45	7 15	1 00
4 05	10 10	7 40	1 25	4 05	10 10	7 40	1 25
4 30	10 35	8 05	1 50	4 30	10 35	8 05	1 50
4 55	11 00	8 30	2 15	4 55	11 00	8 30	2 15
5 20	11 25	8 55	2 40	5 20	11 25	8 55	2 40
5 45	11 50	9 20	3 05	5 45	11 50	9 20	3 05
6 10	12 15	9 45	3 30	6 10	12 15	9 45	3 30
6 35	12 40	10 10	3 55	6 35	12 40	10 10	3 55
7 00	1 05	10 35	4 20	7 00	1 05	10 35	4 20
7 25	1 30	11 00	4 45	7 25	1 30	11 00	4 45
7 50	1 55	11 25	5 10	7 50	1 55	11 25	5 10
8 15	2 20	11 50	5 35	8 15	2 20	11 50	5 35
8 40	2 45	12 15	6 00	8 40	2 45	12 15	6 00
9 05	3 10	12 40	6 25	9 05	3 10	12 40	6 25
9 30	3 35	1 00	6 50	9 30	3 35	1 00	6 50
9 55	4 00	1 25	7 15	9 55	4 00	1 25	7 15
10 20	4 25	1 50	7 40	10 20	4 25	1 50	7 40
10 45	4 50	2 15	8 05	10 45	4 50	2 15	8 05
11 10	5 15	2 40	8 30	11 10	5 15	2 40	8 30
11 35	5 40	3 05	8 55	11 35	5 40	3 05	8 55
12 00	6 05						

Page 10

BUY ROUND TRIP TICKETS

Ask our ticket agents about the added convenience and saving that can be effected through the purchase of round trip railroad tickets.

Our agents are always glad to arrange for your return transportation before departure from your home city, so please do not hesitate to call upon them for this service.

**SOUTHERN RAILWAY
SYSTEM**

Source:
Southern Railway System
Passenger Train Schedules
dated April 30, 1961.

[fol. 818]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-12

615

I.O.C. Docket No. 21563
 Witness: George V. Bayless
 Exhibit No. 8 (revised)
 Sheet 1 of 2

BUY ROUND TRIP TICKETS

Ask our ticket agents about the added convenience and saving that can be obtained through the purchase of round trip railroad tickets.

Our agents are always glad to arrange for your return reservation before departure from your home city, so plans do not lapse and all upon them for the return.

SOUTHERN RAILWAY SYSTEM

10. SOUTHERN RAILWAY SYSTEM AND ASSOCIATES

Statement of the Southern Railway System and its Associates

SOUTHERN RAILWAY SYSTEM	
1. Name of the company	Southern Railway System
2. Principal office	Atlanta, Georgia
3. Principal business	Transportation
4. Principal products	Passenger and freight transportation
5. Principal customers	General public and business
6. Principal competitors	Other railroads and airlines
7. Principal assets	Rolling stock and infrastructure
8. Principal liabilities	Debt and equity
9. Principal income	Operating revenue
10. Principal expenses	Operating costs
11. Principal profits	Operating profit
12. Principal losses	Operating loss
13. Principal assets	Rolling stock and infrastructure
14. Principal liabilities	Debt and equity
15. Principal income	Operating revenue
16. Principal expenses	Operating costs
17. Principal profits	Operating profit
18. Principal losses	Operating loss
19. Principal assets	Rolling stock and infrastructure
20. Principal liabilities	Debt and equity
21. Principal income	Operating revenue
22. Principal expenses	Operating costs
23. Principal profits	Operating profit
24. Principal losses	Operating loss
25. Principal assets	Rolling stock and infrastructure
26. Principal liabilities	Debt and equity
27. Principal income	Operating revenue
28. Principal expenses	Operating costs
29. Principal profits	Operating profit
30. Principal losses	Operating loss

11. SOUTHERN RAILWAY SYSTEM AND ASSOCIATES

Statement of the Southern Railway System and its Associates

1. Name of the company	Southern Railway System
2. Principal office	Atlanta, Georgia
3. Principal business	Transportation
4. Principal products	Passenger and freight transportation
5. Principal customers	General public and business
6. Principal competitors	Other railroads and airlines
7. Principal assets	Rolling stock and infrastructure
8. Principal liabilities	Debt and equity
9. Principal income	Operating revenue
10. Principal expenses	Operating costs
11. Principal profits	Operating profit
12. Principal losses	Operating loss
13. Principal assets	Rolling stock and infrastructure
14. Principal liabilities	Debt and equity
15. Principal income	Operating revenue
16. Principal expenses	Operating costs
17. Principal profits	Operating profit
18. Principal losses	Operating loss
19. Principal assets	Rolling stock and infrastructure
20. Principal liabilities	Debt and equity
21. Principal income	Operating revenue
22. Principal expenses	Operating costs
23. Principal profits	Operating profit
24. Principal losses	Operating loss
25. Principal assets	Rolling stock and infrastructure
26. Principal liabilities	Debt and equity
27. Principal income	Operating revenue
28. Principal expenses	Operating costs
29. Principal profits	Operating profit
30. Principal losses	Operating loss

818

Source:

Southern Railway System
 Passenger Train Schedules Folder,
 dated April 30, 1961

BIRMINGHAM-ATLANTA
ATLANTA-CHARLOTTE-WASHINGTON

(Birmingham, Charlotte, Danville and Washington Divisions)

[illegible]

Source
Passerby
dated 1/1/68

Sheet 2 of 2

dated April 30, 1961

819

I.C.C. ~~BUCKET~~ No. 21563
Witness: ~~GEORGE V. BAYLISS~~
Exhibit No. 10 (Revised)
Sheet 1 of 4

**TIMETABLE OF SEABOARD AIR LINE RAILROAD PASSENGER
TRAINS SERVING RALEIGH, N. C.**

[illegible]

[fol. 820]

[illegible]

617a

11

13

Source: Seaboard Air Line Railroad Timetable Folder, effective April 30, 1961.

820

SEABOARD AIR LINE RAILROAD (Cont'd)

SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA										
(Continued)										
TABLE 2										
Read Down				Miles from Richmond	Daily Trains Eastern Standard Time		Read Up			
9	57	7	21				10	58	22	8
9 05	2 15	12 25	3 35	259.5	to Hamlet	N. C.	10 55	10 55	2 50	8 00
9 25				265.4	to Ochsboro	S. C.	11 25			
9 37		6 12 45		274.3	to Wallace					
9 55				275.5	Piedmont River		11 55			4 30
10 10				276.7	to Cheraw					
10 16				281.6	to Kinston					
10 22				285.9	to Patrick					
10 32				305.1	to Nottoway					3 45
10 42				311.9	to Suffolk					1 3 35
10 48				318.0	to Caswell					
		1 36		324.7	to Shepard					
11 03				331.6	to Camden					3 08
11 16				335.9	Waynes River					
				344.1	to Lenoir					
				349.1	to Sherry					
11 50	4 10	2 30		354.4	to Pauline				12 50	2 30
12 18		2 50		364.4	to COLUMBIA				12 45	2 05
				365.9	to COLUMBIA					
				368.4	Congaree River					
				371.4	to Cayes					
				373.9	to Othello					
				375.9	to Othello					
				378.9	to Swanton					
				384.4	to Woodford					
				385.9	to North					
				390.0	North River					
				392.0	to Livingston					
				393.0	to Newnes					
				405.4	to Norway					
				410.4	South River					
		3 43		418.0	to Denmark					12 55
				422.3	to Orono					
				425.4	to Orono					
				428.9	to Schofield					
				431.4	to Umana					
				435.6	to Synners					
		4 12		441.1	to Fairfax					12 18
				447.8	to Oxford					
				451.1	to Lenoir					
				455.3	to Lenoir					
				460.3	to Lenoir					
				465.4	to Lenoir					
				470.2	to Lenoir					
				473.8	Savannah River					
				481.4	to Clyde	GA.				
				487.2	to Lenoir					
					to Lenoir					
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					to Lenoir					

[illegible]

619

822

SEABOARD AIR LINE RAILROAD (Cont'd)

SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA

Read Down

Read Up

TABLE 4

Daily Trains

Eastern Standard Time

2-10

100-00

22

8

to JACKSONVILLE

FLA.

to Baldwin

to Loxley

to Starke

to Hawthorne

to Wadwa (Ocala)

to Orange Heights

to Hawthorne

to Citrus

to Seagr

to Anthony

to Ocala (Silver Springs)

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

to Seagr

HILLSBORO RIVER

to Subher Springs

to Odessa

to Safety Harbor

to Clearwater (Seaside-Silver Hotel)

to Seaside

to Largo

to Bay Pines (Madison St., Redington St.)

to St. PETERSBURG

to

to

to

to

to

to

to

to

to

to

to

to

to

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to

to

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to

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[fol. 823]

SEABOARD AIR LINE RAILROAD (Cont'd)

SCHEDULES BETWEEN EASTERN CITIES AND FLORIDA THROUGH VIRGINIA, THE CAROLINAS AND GEORGIA

(Continued)

Read Down				Miles from Richmond	TABLE 4		Read Up				CHARACTERS—TABLES 3-4-5-6
6-1	67-167	7	21		Daily Trains	Eastern Standard Time	2-10	100-38	22	8	
SAL tickets issued between St. Petersburg and Tampa via Seaboard's Greyhound Lines.	AM 9 20	AM 9 30	AM 10 10	644.3	to JACKSONVILLE	FLA.	AM 6 30	PM 4 00	PM 7 00	PM 7 00	a Stops to receive and discharge passengers for and from Petersburg and beyond, for and from points at which these trains are regularly scheduled to stop, for and from Winter Haven and Hollywood.
	AM 9 30	AM 10 10	AM 10 20	642.6	to Baldwin						b Stops to receive and discharge passengers for and from Jacksonville and beyond.
	AM 9 40	AM 10 20	AM 10 30	641.6	to Lawley						c Stops to receive and discharge passengers for and from Jacksonville and beyond, also for and from Waldo and Ocala.
	AM 9 50	AM 10 30	AM 10 40	639.9	to Starke		5 10				d Stops to receive and discharge passengers for and from Jacksonville and beyond, and points between St. Petersburg and West Lake Wales.
	AM 10 00	AM 10 40	AM 10 50	638.7	to Hampton		4 55	4 30	4 02		e Stops to receive and discharge passengers for and from West Palm Beach and Miami, also points covered by "d", next above.
	AM 10 10	AM 10 50	AM 11 00	708.1	to Waldo (Ocala-ville)						f Stops to discharge passengers on notice to Conductor; to receive passengers on signal or on notice to ticket agent.
	AM 10 20	AM 11 00	AM 11 10	714.4	to Orange Heights						g Stops to receive and discharge passengers for and from Waldo and Ocala, also points covered by "d", above.
	AM 10 30	AM 11 10	AM 11 20	727.0	to Hawthorne						h Stops to receive and discharge passengers for and from Petersburg and beyond.
	AM 10 40	AM 11 20	AM 11 30	732.3	to Ocala						i Stops to discharge passengers from West Savannah and beyond.
	AM 10 50	AM 11 30	AM 11 40	738.8	to Seville						j Stops to receive and discharge passengers for and from Petersburg and beyond, points served by the "Gulf Wind", and points between St. Petersburg and West Lake Wales.
	AM 11 00	AM 11 40	AM 11 50	745.4	to Ocala (Silver Springs)		4 05	4 10	4 02		k Stops to receive passengers for Jacksonville and beyond.
	AM 11 10	AM 11 50	AM 12 00	752.2	to Seville						l Stops to receive and discharge passengers for and from points north of Plant City.
	AM 11 20	AM 12 00	AM 12 10	757.1	to Seville						m Stops to receive passengers for points south of Wildwood where train stops.
	AM 11 30	AM 12 10	AM 12 20	761.1	to Seville						n Stops to discharge passengers from north of Jacksonville, and arriving on connecting lines.
	AM 11 40	AM 12 20	AM 12 30	766.9	to Seville						o Stops to receive passengers for Tampa and beyond.
	AM 11 50	AM 12 30	AM 12 40	771.5	to Seville						p Stops to discharge passengers from Wildwood and beyond.
	AM 12 00	AM 12 40	AM 12 50	776.1	to Seville						q Stops to receive and discharge passengers for or from Tallahassee and beyond.
	AM 12 10	AM 12 50	AM 1 00	786.1	to Seville						r Stops to discharge passengers from West Savannah and beyond, and to receive for West Palm Beach and Miami.
	AM 12 20	AM 1 00	AM 1 10	800.4	to Seville						s Stops to discharge passengers from Jacksonville and beyond and from points between Tampa and Wildwood.
	AM 12 30	AM 1 10	AM 1 20	808.1	to Seville						t Stops to receive and discharge passengers for and from West Palm Beach and Miami; also for and from Jacksonville and beyond.
AM 12 40	AM 1 20	AM 1 30	817.6	to Seville						u Stops to receive and discharge passengers for and from points served by "Gulf Wind" and between St. Petersburg-West Lake Wales.	
AM 12 50	AM 1 30	AM 1 40	826.0	to Seville						v Time is for Seaboard Station, Tampa.	
AM 1 00	AM 1 40	AM 1 50	833.0	to Seville							
AM 1 10	AM 1 50	AM 2 00	837.5	to Seville							
AM 1 20	AM 2 00	AM 2 10	839.5	to Seville							
AM 1 30	AM 2 10	AM 2 20	842.5	to Seville							
AM 1 40	AM 2 20	AM 2 30	844.8	to Seville							
AM 1 50	AM 2 30	AM 2 40	846.8	to Seville							
AM 2 00	AM 2 40	AM 2 50	850.0	to TAMPA							
AM 2 10	AM 2 50	AM 3 00	855.0	to TAMPA							
HILLSBORO RIVER											
AM 2 20	AM 3 00	AM 3 10	861.5	to Seville							
AM 2 30	AM 3 10	AM 3 20	875.2	to Seville							
AM 2 40	AM 3 20	AM 3 30	880.1	to Seville							
AM 2 50	AM 3 30	AM 3 40	887.7	to Seville							
AM 3 00	AM 3 40	AM 3 50	889.1	to Seville							
AM 3 10	AM 3 50	AM 4 00	891.0	to Seville							
AM 3 20	AM 4 00	AM 4 10	897.4	to Seville							
AM 3 30	AM 4 10	AM 4 20	908.9	to Seville							
SILVER SPRING (Ocala train reversed)											
AM 3 40	AM 4 20	AM 4 30	912.0	to Seville							
AM 3 50	AM 4 30	AM 4 40	916.0	to Seville							
AM 4 00	AM 4 40	AM 4 50	920.0	to Seville							
AM 4 10	AM 4 50	AM 5 00	924.0	to Seville							
AM 4 20	AM 5 00	AM 5 10	928.0	to Seville							
AM 4 30	AM 5 10	AM 5 20	932.0	to Seville							
AM 4 40	AM 5 20	AM 5 30	936.0	to Seville							
AM 4 50	AM 5 30	AM 5 40	940.0	to Seville							
AM 5 00	AM 5 40	AM 5 50	944.0	to Seville							
AM 5 10	AM 5 50	AM 6 00	948.0	to Seville							
AM 5 20	AM 6 00	AM 6 10	952.0	to Seville							
AM 5 30	AM 6 10	AM 6 20	956.0	to Seville							
AM 5 40	AM 6 20	AM 6 30	960.0	to Seville							
AM 5 50	AM 6 30	AM 6 40	964.0	to Seville							
AM 6 00	AM 6 40	AM 6 50	968.0	to Seville							
AM 6 10	AM 6 50	AM 7 00	972.0	to Seville							
AM 6 20	AM 7 00	AM 7 10	976.0	to Seville							
AM 6 30	AM 7 10	AM 7 20	980.0	to Seville							
AM 6 40	AM 7 20	AM 7 30	984.0	to Seville							
AM 6 50	AM 7 30	AM 7 40	988.0	to Seville							
AM 7 00	AM 7 40	AM 7 50	992.0	to Seville							
AM 7 10	AM 7 50	AM 8 00	996.0	to Seville							
AM 7 20	AM 8 00	AM 8 10	1000.0	to Seville							
AM 7 30	AM 8 10	AM 8 20	1004.0	to Seville							
AM 7 40	AM 8 20	AM 8 30	1008.0	to Seville							
AM 7 50	AM 8 30	AM 8 40	1012.0	to Seville							
AM 8 00	AM 8 40	AM 8 50	1016.0	to Seville							
AM 8 10	AM 8 50	AM 9 00	1020.0	to Seville							
AM 8 20	AM 9 00	AM 9 10	1024.0	to Seville							
AM 8 30	AM 9 10	AM 9 20	1028.0	to Seville							
AM 8 40	AM 9 20	AM 9 30	1032.0	to Seville							
AM 8 50	AM 9 30	AM 9 40	1036.0	to Seville							
AM 9 00	AM 9 40	AM 9 50	1040.0	to Seville							
AM 9 10	AM 9 50	AM 10 00	1044.0	to Seville							
AM 9 20	AM 10 00	AM 10 10	1048.0	to Seville							
AM 9 30	AM 10 10	AM 10 20	1052.0	to Seville							
AM 9 40	AM 10 20	AM 10 30	1056.0	to Seville							
AM 9 50	AM 10 30	AM 10 40	1060.0	to Seville							
AM 10 00	AM 10 40	AM 10 50	1064.0	to Seville							
AM 10 10	AM 10 50	AM 11 00	1068.0	to Seville							
AM 10 20	AM 11 00	AM 11 10	1072.0	to Seville							
AM 10 30	AM 11 10	AM 11 20	1076.0	to Seville							
AM 10 40	AM 11 20	AM 11 30	1080.0	to Seville							
AM 10 50	AM 11 30	AM 11 40	1084.0	to Seville							
AM 11 00	AM 11 40	AM 11 50	1088.0	to Seville							
AM 11 10	AM 11 50	AM 12 00	1092.0	to Seville							
AM 11 20	AM 12 00	AM 12 10	1096.0	to Seville							
AM 11 30	AM 12 10	AM 12 20	1100.0	to Seville							
AM 11 40	AM 12 20	AM 12 30	1104.0	to Seville							
AM 11 50	AM 12 30	AM 12 40	1108.0	to Seville							
AM 12 00	AM 12 40	AM 12 50	1112.0	to Seville							
AM 12 10	AM 12 50	AM 1 00	1116.0	to Seville							
AM 12 20	AM 1 00	AM 1 10	1120.0	to Seville							
AM 12 30	AM 1 10	AM 1 20	1124.0	to Seville							
AM 12 40	AM 1 20	AM 1 30	1128.0	to Seville							
AM 12 50	AM 1 30	AM 1 40	1132.0	to Seville							
AM 1 00	AM 1 40	AM 1 50	1136.0	to Seville							
AM 1 10	AM 1 50	AM 2 00	1140.0	to Seville							
AM 1 20	AM 2 00	AM 2 10	1144.0	to Seville							
AM 1 30	AM 2 10	AM 2 20	1148.0	to Seville							
AM 1 40	AM 2 20	AM 2 30	1152.0	to Seville							
AM 1 50	AM 2 30	AM 2 40	1156.0	to Seville							
AM 2 00	AM 2 40	AM 2 50	1160.0	to Seville							
AM 2 10	AM 2 50	AM 3 00	1164.0	to Seville							
AM 2 20	AM 3 00	AM 3 10	1168.0	to Seville							
AM 2 30	AM 3 10	AM 3 20	1172.0	to Seville							
AM 2 40	AM 3 20	AM 3 30	1176.0	to Seville							
AM 2 50	AM 3 30	AM 3 40	1180.0	to Seville							
AM 3 00	AM 3 40	AM 3 50	1184.0	to Seville							
AM 3 10	AM 3 50	AM 4 00	1188.0	to Seville							
AM 3 20	AM 4 00	AM 4 10	1192.0	to Seville							
AM 3 30	AM 4 10	AM 4 20	1196.0	to Seville							
AM 3 40	AM 4 20	AM 4 30	1200.0	to Seville							
AM 3 50	AM 4 30	AM 4 40	1204.0	to Seville							
AM 4 00	AM 4 40	AM 4 50	1208.0	to Seville							
AM 4 10	AM 4 50	AM 5 00	1212.0	to Seville							
AM 4 20	AM 5 00	AM 5 10	1216.0	to Seville							
AM 4 30	AM 5 10	AM 5 20	1220.0	to Seville							
AM 4 40	AM 5 20	AM 5 30	1224.0	to Seville							
AM 4 50	AM 5 30	AM 5 40	1228.0	to Seville							
AM 5 00	AM 5 40	AM 5 50	1232.0	to Seville							
AM 5 10	AM 5 50	AM 6 00	1236.0	to Seville							
AM 5 20	AM 6 00	AM 6 10	1240.0	to Seville							
AM 5 30	AM 6 10	AM 6 20	1244.0	to Seville							
AM 5 40	AM 6 20	AM 6 30	1248.0	to Seville							
AM 5 50	AM 6 30	AM 6 40	1252.0	to Seville							
AM 6 00	AM 6 40	AM 6 50	1256.0	to Seville							
AM 6 10	AM 6 50	AM 7 00	1260.0	to Seville							
AM 6 20	AM 7 00	AM 7 10	1264.0	to Seville							
AM 6 30	AM 7 10	AM 7 20	1268.0	to Seville							
AM 6 40	AM 7 20	AM 7 30	1272.0	to Seville							
AM 6 50	AM 7 30	AM 7 40	1276.0	to Seville							
AM 7 00	AM 7 40	AM 7 50	1280.0	to Seville							
AM 7 10	AM 7 50	AM 8 00	1284.0	to Seville							
AM 7 20	AM 8 00	AM 8 10	1288.0	to Seville							
AM 7 30	AM 8 10	AM 8 20	1292.0	to Seville							
AM 7 40	AM 8 20	AM 8 30	1296.0	to Seville							
AM 7 50	AM 8 30	AM 8 40	1300.0	to Seville							
AM 8 00	AM 8 40	AM 8 50	1304.0	to Seville							
AM 8 10	AM 8 50	AM 9 00	1308.0	to Seville							
AM 8 20	AM 9 00	AM 9 10	1312.0	to Seville							
AM 8 30	AM 9 10	AM 9 20	1316.0	to Seville							
AM 8 40	AM 9 20	AM 9 30	1320.0	to Seville							
AM 8 50	AM 9 30	AM 9 40	1324.0	to Seville							
AM 9 00	AM 9 40	AM 9 50	1328.0	to Seville							
AM 9 10	AM 9 50	AM 10 00	1332.0	to Seville							
AM 9 20	AM 10 00	AM 10 10	1336.0	to Seville		</					

I.C.C. Docket No. 21563

Witness: GEORGE V. BAYLISS

Exhibit No. 11 (Revised)

Sheet 1 of 2

SEABOARD AIR LINE RAILROAD

SCHEDULES BETWEEN EASTERN CITIES AND ATLANTA, BIRMINGHAM AND THE SOUTHWEST
THROUGH VIRGINIA AND THE CAROLINAS

Daily Trains—Read Down				Miles	TABLE 1-1		Daily Trains—Read Up			
143	147	151	155		NYNH&H P.R.R. RF&P SAL		157	161	165	169
PM	AM	AM	PM		Eastern Standard Time		AM	PM	PM	PM
7 25	10 00	6 00	7 25		Lr BOSTON (NYNH&H)		7 25	7 15	8 15	
7 45	10 15	11 45	7 45	0.0	Lr NEW YORK (Pan-Penn. Station)		8 30	8 50	9 50	
8 05	10 30	12 00	8 05	10.0	Lr Newark		8 50	9 10	10 10	
8 25	10 45	12 15	8 25	58.1	Lr Trenton		9 10	9 30	10 30	
8 45	11 00	12 30	8 45	85.9	Lr North Philadelphia		9 30	9 50	10 50	
9 05	11 15	12 45	9 05	91.7	Lr PHILADELPHIA (29th St. Station)		9 50	10 10	11 10	
9 25	11 30	1 00	9 25	118.1	Lr Wilmington		10 10	10 30	11 30	
9 45	11 45	1 15	9 45	186.5	Lr Baltimore		10 30	10 50	11 50	
10 05	12 00	1 30	10 05	226.6	Lr WASHINGTON		10 50	11 10	12 10	
10 25	12 15	1 45	10 25	0.0	Lr WASHINGTON (RF&P)		11 10	11 30	12 30	
10 45	12 30	1 55	10 45	8.2	Lr Alexandria		11 30	11 50	12 50	
11 05	12 45	2 05	11 05	34.7	Lr Quantico		11 50	12 10	1 10	
11 25	1 00	2 20	11 25	54.1	Lr Fredericksburg		12 10	12 30	1 30	
11 45	1 15	2 35	11 45	113.5	Lr RICHMOND (Broad St. Sta.) (RF&P)		12 30	12 50	1 50	
12 05	1 30	2 50	12 05	0.0	Lr RICHMOND (Broad St. Sta.) (SAL)		1 10	1 30	2 30	
12 25	1 45	3 05	12 25	4.9	Lr Petersburg		1 30	1 50	2 50	
12 45	2 00	3 20	12 45	27.4	Lr Norfolk		1 50	2 10	3 10	
1 05	2 15	3 35	1 05	53.1	Lr Norfolk (Tunnel Bys.) Note on Page 30.		2 10	2 30	3 30	
1 25	2 30	3 50	1 25	102.9	Lr Portsmouth		2 30	2 50	3 50	
1 45	2 45	4 05	1 45	118.1	Lr Bowers		2 50	3 10	4 10	
2 05	3 00	4 20	2 05	161.9	Lr Suffolk		3 10	3 30	4 30	
					Lr Purvis		3 30	3 50	4 50	
					Lr Carrollville		3 50	4 10	5 10	
					Lr Franklin		4 10	4 30	5 30	
					Lr Hand		4 30	4 50	5 50	
					Lr Newsome		4 50	5 10	6 10	
					Lr Boykins		5 10	5 30	6 30	
					Lr Margaret		5 30	5 50	6 50	
					Lr Seaboard		5 50	6 10	7 10	
					Lr Gunberry		6 10	6 30	7 30	
					Lr Garysburg		6 30	6 50	7 50	
					Lr Weldon		6 50	7 10	8 10	
					Lr Roanoke Rapids		7 10	7 30	8 30	
					Lr Summit		7 30	7 50	8 50	
					Lr Littleton		7 50	8 10	9 10	
					Lr Vaughan		8 10	8 30	9 30	
					Lr Macon		8 30	8 50	9 50	
					Lr Warren Plains		8 50	9 10	10 10	
					Lr Norfolk		9 10	9 30	10 30	
					Lr Henderson		9 30	9 50	10 50	
					Lr RALEIGH		9 50	10 10	11 10	
					Lr RALEIGH		10 10	10 30	11 30	
					Lr Sanford		10 30	10 50	11 50	
					Lr Southern Pine (Pinhurst)		10 50	11 10	12 10	
					Lr Aberdeen		11 10	11 30	12 30	
					Lr Hamlet		11 30	11 50	12 50	
					Lr Hamlet		11 50	12 10	1 10	
					Lr Rockingham		12 10	12 30	1 30	
					Lr Steele's Mill		12 30	12 50	1 50	
					Lr Lenoirville		12 50	1 10	2 10	
					Lr Wadesboro		1 10	1 30	2 30	
					Lr Polkton		1 30	1 50	2 50	
					Lr Peachland		1 50	2 10	3 10	
					Lr Marshville		2 10	2 30	3 30	
					Lr Wingate		2 30	2 50	3 50	
					Lr Morris		2 50	3 10	4 10	
					Lr Morris		3 10	3 30	4 30	
					Lr Mineral Springs		3 30	3 50	4 50	
					Lr Washaw		3 50	4 10	5 10	

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THROUGH VIRGINIA AND THE CAROLINAS

Daily Trains—Read Down				Miles	TABLE 11		Daily Trains—Read Up			
123	124	125	126		NYNH&P PRR RF&P SAL		127	128	129	130
					Eastern Standard Time					
					Lv BOSTON (NYNH&P)					
					Lv NEW YORK (P&B—Penn. Station)					
					Lv Newark					
					Lv Trenton					
					Lv North Philadelphia					
					Lv PHILADELPHIA (30th St. Station)					
					Lv Wilmington					
					Lv Baltimore					
					Lv WASHINGTON					
					Lv WASHINGTON (arap)					
					Lv Alexandria VA					
					Lv Quantico					
					Lv Fredericksburg					
					Lv RICHMOND (Broad St. Sta.) (arap)					
					Lv RICHMOND (Broad St. Sta.) (sal)					
					Lv Petersburg James River VA					
					Lv Norfolk Roanoke River					
					Lv Norfolk					
					Lv Henderson					
					Lv RALEIGH					
					Lv Norfolk (Tunnel Bus) Note on Page 30					
					Elizabeth River					
					Lv Portsmouth					
					Lv Suffolk					
					Lv Purvis					
					Lv Carrollton					
					Blackwater River					
					Lv Franklin					
					Nottoway River					
					Lv Hand					
					Lv Newsoms					
					Lv Boykins VA					
					Meunas River					
					Lv Margaret N. C.					
					Lv Seaboard					
					Lv Gumberry					
					Lv Garysburg					
					Roanoke River					
					Lv Weldon					
					Lv Roanoke Rapids					
					Lv Summit					
					Lv Littleton					
					Lv Vaughan					
					Lv Mason					
					Lv Warren Plains					
					Lv Martins					
					Lv Henderson					
					Lv RALEIGH					
					Lv Sanford					
					Lv Southern Pines (Pinehurst)					
					Lv Aberdeen					
					Lv Hamlet					
					Lv Hamlet					
					Lv Rockingham					
					Lv Seale's Mill					
					Pee Dee River					
					Lv Lenoir					
					Lv Wadesboro					
					Lv Polkton					
					Lv Peachland					
					Lv Marshville					
					Lv Wincote					
					Lv Monroe					
					Lv Monroe					
					Lv Mineral Springs					
					Lv Washburn N. C.					
					Lv Van Wyck S. C.					
					Catawba River					
					Lv Catawba					
					Lv Edgemont					
					Lv Redman					
					Lv Chester					
					Broad River					
					Lv Carleton					
					Tiger and Enoree Rivers					
					Lv Whitmire					
					Lv Payne					
					Lv Clinton					
					Lv Mountville					
					Lv Cross Hill					
					Saluda River					
					Lv Greenwood					

Characters explained on page 30:
Equipment on pages 6-1

(Continued on page 29)

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Dark Face Figures P.M.

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Source:

Seaboard Air Line Railroad Time-table, effective
April 30, 1961

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SEABOARD AIR LINE RAILROAD (Cont'd)

SCHEDULES BETWEEN EASTERN CITIES AND ATLANTA, BIRMINGHAM AND THE SOUTHWEST THROUGH VIRGINIA AND THE CAROLINAS

Road Down			Miles from Richmond		TABLE 11 (Continued)		Road Up		
5	33	3			DAILY TRAINS		4	6	34
PM	AM	PM			Le Greenwood	Long Camp Creek	Ar	AM	PM
12 35	4 3 43	11 55	429.5		Le Abbeville	Letta River	Ar	1 37	8 05
12 55	4 4 10	12 35	444.7		Le Calhoun Falls	JAVANNAH RIVER	Ar	1 03	8 25
1 17		12 43	459.2		Le Hardman	GA.	Ar	12 43	10 03
			461.9		Le Middleton		Ar		
			465.8		Le Elberton	NORTH DRAKE RIVER	Ar		
1 40	4 4 50	1 15	476.0		Le Corbally		Ar	12 10	4 30
			485		Le Cedar		Ar		
1 2 15		1 1 40	493.7		Le Colburn		Ar	11 55	1 15
1 2 35		1 2 00	499.2		Le Hull		Ar	11 35	
			504.1			COON RIVER	Ar		
COACHES	2 30	5 34	2 30	510.4	Le Athens		Ar	11 15	2 40
			12 45	519.8	Le Bogart		Ar		7 05
COACHES	2 55	6 00	3 05	529.8	Le Smithton		Ar	10 40	7 25
				531.7	Le Windsor		Ar		
3 30				536.2	Le Auburn		Ar		
				542.8	Le Oconee		Ar		
		1 3 32	548.8		Le Leesville		Ar	10 25	2 40
		1 3 44	554.7		Le Glasgow		Ar	11 15	
			558.1		Le Leesport		Ar		
		1 3 55	559.7		Le Lumberton		Ar	11 10	
4 40	6 45	4 10	565.3		Le Towhee		Ar	10 40	
4 55	7 20	5 30	574.1		Le Emory University		Ar		
5 05	7 35		583.3		ATLANTA		Ar	9 30	
			592.3		ATLANTA		Ar		
			595.3		Chattahoochee River		Ar		
			606.3		Neotoma River		Ar		
			614.5		Le Dallas		Ar	11 05	
			630.7		Le Rockmart		Ar	11 45	4 45
			643.5		Le Cedarburg		Ar	11 25	4 25
			652.9		Le Egan (EST)	GA.	Ar	11 10	
			658.2		Le Gordon Springs (EST) ALA.		Ar		
			667.3		Le Piedmont		Ar	9 45	3 30
			675.0		Le Maxwellton		Ar	9 22	
			681		Le Wellington		Ar	9 05	2 40
			692.7		Le Oconee		Ar	8 55	
			696.2			COON RIVER	Ar		
			696.0		Le Leno		Ar		
			702.6		Le Ringwood		Ar	8 44	3 30
			711.7		Le Waterville		Ar	8 32	
			721.0		Le Odenville		Ar	8 22	
			726.3		Le Santa		Ar	8 15	
			729.8		Le Purcell		Ar	8 10	
			733.1			Canada River	Ar		
			736.6		Le Allen		Ar		
			749.9		Le BIRMINGHAM	ALA.	Ar	7 45	3 25
			758.8		Le BIRMINGHAM	(railroad)	Ar	7 45	3 25
			897.5		Le Tupelo	MISS.	Ar	1 40	1 40
			956.7		Le Holly Springs		Ar	1 30	1 30
			1002.9		Le MEMPHIS	TENN.	Ar	10 40	
AM	PM	AM			Trains explained on page 20		PM	PM	PM

CHARACTERS—TABLES 11

- ~~CONFIDENTIAL - TABLE 11~~
- a. Stops to receive and discharge passengers for and from Raleigh, Birmingham and beyond.
 - b. Stops on signal to receive or discharge revenue passengers.
 - c. Stops to discharge passengers from Birmingham and beyond.
 - d. Stops to receive and discharge passengers for or from Washington and beyond.
 - e. Stops to discharge passengers from Raleigh and beyond; to receive for Columbia, Monroe and beyond.
 - f. Stops to discharge passengers on notice to Conductor; to receive passengers on signal or on notice to ticket agent.
 - g. Stops to receive and discharge passengers for and from Atlanta, Birmingham and beyond.
 - h. Stops to receive and discharge passengers for and from Monroe and beyond.
 - i. Stops to receive and discharge passengers for and from Raleigh, Atlanta and beyond.
 - m. Stops on Mondays and Sundays only to receive passengers for Birmingham.
 - n. Stops to receive passengers for points east of Monroe.
 - o. Portsmouth-Atlanta coach 40-B, sleeper B-3, handled on Train 17 Portsmouth to Raleigh, then on Train 33 to Atlanta.
 - a. Atlanta-Portsmouth coach 40-B and sleeper B-4, handled on Train 34 Atlanta to Raleigh, then on Train 18 to Portsmouth.
 - v. Stops to receive and discharge passengers for and from points east of Norfolk and for and from points north and west of Hamlet.
 - a. Stops to discharge passengers from Atlanta and beyond and to receive passengers for points on the Portsmouth line.
 - a. Does not run on Saturday nights.

TIME TABLE OF ATLANTIC COAST LINE
RAILROAD PASSENGER TRAINS SERVING
SEALMA, N. C.

NEW YORK, WASHINGTON, RICHMOND AND JACKSONVILLE

NEW YORK THROUGH WASHINGTON, RICHMOND AND ALL FLORIDA

SOUTHERN - READ DOWN

NORTHERN - READ UP

TABLE 1
DAILY TRAINS

Train No.	Station	Time	Train No.	Station	Time
101	New York	7:00 AM	102	New York	7:00 AM
103	New York	7:15 AM	104	New York	7:15 AM
105	New York	7:30 AM	106	New York	7:30 AM
107	New York	7:45 AM	108	New York	7:45 AM
109	New York	8:00 AM	110	New York	8:00 AM
111	New York	8:15 AM	112	New York	8:15 AM
113	New York	8:30 AM	114	New York	8:30 AM
115	New York	8:45 AM	116	New York	8:45 AM
117	New York	9:00 AM	118	New York	9:00 AM
119	New York	9:15 AM	120	New York	9:15 AM
121	New York	9:30 AM	122	New York	9:30 AM
123	New York	9:45 AM	124	New York	9:45 AM
125	New York	10:00 AM	126	New York	10:00 AM
127	New York	10:15 AM	128	New York	10:15 AM
129	New York	10:30 AM	130	New York	10:30 AM
131	New York	10:45 AM	132	New York	10:45 AM
133	New York	11:00 AM	134	New York	11:00 AM
135	New York	11:15 AM	136	New York	11:15 AM
137	New York	11:30 AM	138	New York	11:30 AM
139	New York	11:45 AM	140	New York	11:45 AM
141	New York	12:00 PM	142	New York	12:00 PM
143	New York	12:15 PM	144	New York	12:15 PM
145	New York	12:30 PM	146	New York	12:30 PM
147	New York	12:45 PM	148	New York	12:45 PM
149	New York	1:00 PM	150	New York	1:00 PM
151	New York	1:15 PM	152	New York	1:15 PM
153	New York	1:30 PM	154	New York	1:30 PM
155	New York	1:45 PM	156	New York	1:45 PM
157	New York	2:00 PM	158	New York	2:00 PM
159	New York	2:15 PM	160	New York	2:15 PM
161	New York	2:30 PM	162	New York	2:30 PM
163	New York	2:45 PM	164	New York	2:45 PM
165	New York	3:00 PM	166	New York	3:00 PM
167	New York	3:15 PM	168	New York	3:15 PM
169	New York	3:30 PM	170	New York	3:30 PM
171	New York	3:45 PM	172	New York	3:45 PM
173	New York	4:00 PM	174	New York	4:00 PM
175	New York	4:15 PM	176	New York	4:15 PM
177	New York	4:30 PM	178	New York	4:30 PM
179	New York	4:45 PM	180	New York	4:45 PM
181	New York	5:00 PM	182	New York	5:00 PM
183	New York	5:15 PM	184	New York	5:15 PM
185	New York	5:30 PM	186	New York	5:30 PM
187	New York	5:45 PM	188	New York	5:45 PM
189	New York	6:00 PM	190	New York	6:00 PM
191	New York	6:15 PM	192	New York	6:15 PM
193	New York	6:30 PM	194	New York	6:30 PM
195	New York	6:45 PM	196	New York	6:45 PM
197	New York	7:00 PM	198	New York	7:00 PM
199	New York	7:15 PM	200	New York	7:15 PM
201	New York	7:30 PM	202	New York	7:30 PM
203	New York	7:45 PM	204	New York	7:45 PM
205	New York	8:00 PM	206	New York	8:00 PM
207	New York	8:15 PM	208	New York	8:15 PM
209	New York	8:30 PM	210	New York	8:30 PM
211	New York	8:45 PM	212	New York	8:45 PM
213	New York	9:00 PM	214	New York	9:00 PM
215	New York	9:15 PM	216	New York	9:15 PM
217	New York	9:30 PM	218	New York	9:30 PM
219	New York	9:45 PM	220	New York	9:45 PM
221	New York	10:00 PM	222	New York	10:00 PM
223	New York	10:15 PM	224	New York	10:15 PM
225	New York	10:30 PM	226	New York	10:30 PM
227	New York	10:45 PM	228	New York	10:45 PM
229	New York	11:00 PM	230	New York	11:00 PM
231	New York	11:15 PM	232	New York	11:15 PM
233	New York	11:30 PM	234	New York	11:30 PM
235	New York	11:45 PM	236	New York	11:45 PM
237	New York	12:00 AM	238	New York	12:00 AM
239	New York	12:15 AM	240	New York	12:15 AM
241	New York	12:30 AM	242	New York	12:30 AM
243	New York	12:45 AM	244	New York	12:45 AM
245	New York	1:00 AM	246	New York	1:00 AM
247	New York	1:15 AM	248	New York	1:15 AM
249	New York	1:30 AM	250	New York	1:30 AM
251	New York	1:45 AM	252	New York	1:45 AM
253	New York	2:00 AM	254	New York	2:00 AM
255	New York	2:15 AM	256	New York	2:15 AM
257	New York	2:30 AM	258	New York	2:30 AM
259	New York	2:45 AM	260	New York	2:45 AM
261	New York	3:00 AM	262	New York	3:00 AM
263	New York	3:15 AM	264	New York	3:15 AM
265	New York	3:30 AM	266	New York	3:30 AM
267	New York	3:45 AM	268	New York	3:45 AM
269	New York	4:00 AM	270	New York	4:00 AM
271	New York	4:15 AM	272	New York	4:15 AM
273	New York	4:30 AM	274	New York	4:30 AM
275	New York	4:45 AM	276	New York	4:45 AM
277	New York	5:00 AM	278	New York	5:00 AM
279	New York	5:15 AM	280	New York	5:15 AM
281	New York	5:30 AM	282	New York	5:30 AM
283	New York	5:45 AM	284	New York	5:45 AM
285	New York	6:00 AM	286	New York	6:00 AM
287	New York	6:15 AM	288	New York	6:15 AM
289	New York	6:30 AM	290	New York	6:30 AM
291	New York	6:45 AM	292	New York	6:45 AM
293	New York	7:00 AM	294	New York	7:00 AM
295	New York	7:15 AM	296	New York	7:15 AM
297	New York	7:30 AM	298	New York	7:30 AM
299	New York	7:45 AM	300	New York	7:45 AM

SOURCE:

road 11/1
April 30

15

Atlantic Corp. Line Hall-
road Timeable Folder, effective
April 30, 1961.

I.C.C. Docket No. 21563
 Witness: George V. Bayliss
 Exhibit No. 13 (Revised)

**TIMETABLE OF ATLANTIC COAST LINE RAILROAD
 PASSENGER TRAINS SERVING GOLDSBORO, N. C.**

NEW YORK, WASHINGTON, RICHMOND AND WILMINGTON		TABLE 3		TABLE 3	
East down		PER 77-79 Daily		PER 77-79 Daily	
Miles		Miles		Miles	
101 77-79 Daily		101 77-79 Daily		101 77-79 Daily	
PM		AM		AM	
2.00	0	Lv New York (Penn. Sta.)	PER	Ar	9.30
2.15	10	Lv Newark	"	Ar	9.35
2.30	20	Lv Trenton	"	Ar	
2.45	30	Lv North Philadelphia	"	Ar	8.25
2.55	40	Lv Philadelphia (Penn. Sta. 30th St.)	"	Ar	8.35
3.10	50	Lv Wilmington	"	Ar	7.44
3.25	60	Lv Baltimore (Penn. Sta.)	"	Ar	6.45
3.40	70	Ar Washington	"	Lv	6.00
3.55	80	Lv Washington	W&P	Ar	5.50
4.10	90	Lv Richmond, Va.	"	Lv	5.10
4.25	100	Lv Richmond, Va.	ACL	Ar	5.05
4.40	110	Lv Petersburg	"	Ar	5.00
4.55	120	Lv Emporia, Va.	"	Ar	5.00
5.10	130	Lv Walden, N. C.	"	Ar	5.00
5.25	140	Ar Rocky Mount	"	Lv	12.45
5.40	150	Lv Rocky Mount	"	Ar	12.10
5.55	160	Lv New City	"	Lv	11.50
6.10	170	Lv Wilson	"	Lv	10.35
6.25	180	Lv Wilson	"	Lv	10.30
6.40	190	Lv Black Creek	"	Lv	10.14
6.55	200	Lv Fremont	"	Lv	10.02
7.10	210	Lv Pikesville	"	Lv	9.58
7.25	220	Ar Goldsboro	"	Lv	9.35
7.40	230	Lv Goldsboro	"	Ar	9.36
7.55	240	Lv Goldsboro	"	Lv	9.00
8.10	250	Lv Mount Olive	"	Lv	8.25
8.25	260	Lv Calypso	"	Lv	8.48
8.40	270	Lv Patsco	"	Lv	8.35
8.55	280	Lv Warsaw	"	Lv	8.18
9.10	290	Lv Magnolia	"	Lv	8.00
9.25	300	Lv Smithville	"	Lv	8.01
9.40	310	Lv Trench	"	Lv	7.57
9.55	320	Lv Wallace	"	Lv	7.51
10.10	330	Lv Wilcox	"	Lv	7.46
10.25	340	Lv Wadesboro	"	Lv	7.37
10.40	350	Lv Burgaw	"	Lv	7.36
10.55	360	Lv Rocky Point	"	Lv	7.14
11.10	370	Lv Castle Hayne	"	Lv	7.00
11.25	380	Ar Wilmington, N. C.	"	Lv	

REFERENCE NOTES

- Flag stop to receive or discharge passengers.
- Transfer between Petersburg (A.C.L. Passenger Station) and Petersburg (Appomattox Street Station) made by taxi upon payment of taxi fare.
- New York to Wilmington sleeper operates in PER train 101, W&P train 91 and ACL train 91 New York to Rocky Mount, leaving New York 3.50 PM and Washington 8.20 PM. For schedule see table B on page 8.
- Wilmington to New York sleeper operates in ACL train 2, W&P train 2 and PER train 104 Rocky Mount to New York, leaving Rocky Mount 1.45 AM and arriving New York 10.45 AM. For schedule see table A on page 8.
- Atlantic Greyhound bus leaves Wilmington bus terminal 12.30 PM, arriving Myrtle Beach 2.35 PM.
- Atlantic Greyhound bus leaves Myrtle Beach 2.22 PM, arriving Wilmington bus terminal 4.35 PM.

TIME TABLE OF ATLANTIC COAST LINE RAILROAD PASSENGER TRAINS SERVING GOLDSBORO, N. C.

NEW YORK, WASHINGTON, RICHMOND AND WILMINGTON									
Head down					Head up				
TABLE 3									
101 PER Train LEP 102 B&P Train LEP 103 ACL Train LEP For equipment see table 2									
Eastern Standard Time									
101 77-79 Daily	Miles				102 79 48-79 Daily				
PM					AM				
2:00	0	Lv New York (Penn. Sta.)	PER	Ar	9:20				
2:15	10	Lv Newark	"	Ar	9:35				
2:30	20	Lv Trenton	"	Ar					
2:45	30	Lv North Philadelphia	"	Ar	8:25				
2:55	40	Lv Philadelphia (Penn. Sta. 30th St.)	"	Ar	8:35				
3:05	50	Lv Wilmington	"	Ar	7:45				
3:15	60	Lv Baltimore (Penn. Sta.)	"	Ar	6:45				
3:25	70	Ar Washington	"	Lv	6:00				
3:40	80	Lv Washington	B&P	Ar	5:50				
3:50	90	Ar Richmond, Va.	"	Lv	3:10				
4:00	100	Lv Richmond, Va.	ACL	Ar	2:45				
4:10	110	Lv Petersburg	"	Ar	2:00				
4:20	120	Lv Emporia, Va.	"	Ar	1:10				
4:30	130	Lv Weldon, N. C.	"	Ar	12:45				
4:40	140	Ar Rocky Mount	"	Lv	12:10				
4:50	150	Lv Rocky Mount	"	Ar	11:50				
5:00	160	Lv Sea City	"	Lv	10:50				
5:10	170	Lv Wilson	"	Lv	10:40				
Continous River									
5:30	180	Lv Black Creek	"	Lv	10:14				
5:40	190	Lv Fremont	"	Lv	10:00				
5:50	200	Lv Myrtle	"	Lv	9:55				
6:00	210	Ar Goldsboro	"	Lv	9:35				
6:10	220	Lv Goldsboro	"	Ar	9:35				
Hatteras River									
6:30	230	Lv Mount Olive	"	Lv	9:00				
6:40	240	Lv Colapex	"	Lv	8:50				
6:50	250	Lv Pateon	"	Lv	8:40				
7:00	260	Lv Warsaw	"	Lv	8:30				
7:10	270	Lv Morehead	"	Lv	8:15				
7:20	280	Lv Beaufort	"	Lv	8:00				
7:30	290	Lv Teachey	"	Lv	8:01				
7:40	300	Lv Wallace	"	Lv	7:57				
7:50	310	Lv Willard	"	Lv	7:51				
8:00	320	Lv Watha	"	Lv	7:46				
8:10	330	Lv Bangor	"	Lv	7:37				
8:20	340	Lv Rocky Point	"	Lv	7:36				
Northwest Cape Fear River									
8:30	350	Lv Castle Hayne	"	Lv	7:14				
8:40	360	Ar Wilmington, N. C.	"	Lv	7:00				

REFERENCE NOTES

1. Flag stop to receive or discharge passengers.
2. Transfer between Petersburg (A.C.L. Passenger Station), and Petersburg (Appomattox Street Station) made by taxi upon payment of taxi fare.
3. New York to Wilmington sleeper operates in PER train 101, B&P train 91 and ACL train 91 New York to Rocky Mount, leaving New York 3:50 PM and Washington 8:20 PM. For schedule see table 5 on page 8.
4. Wilmington to New York sleeper operates in ACL train 2, B&P train 2 and PER train 104 Rocky Mount to New York, leaving Rocky Mount 1:45 AM and arriving New York 10:45 AM. For schedule see table A on page 8.
5. Atlantic Greyhound bus leaves Wilmington bus terminal 12:30 PM, arriving Myrtle Beach 2:55 PM.
6. Atlantic Greyhound bus leaves Myrtle Beach 2:02 PM, arriving Wilmington bus terminal 4:35 PM.

[fol. 827]

Source:

Atlantic Coast Line Railroad Timetable Folder,
issued April 30, 1961

CAROLINA TRAILWAYS

CHARLOTTE—RALEIGH—NORFOLK

[fol. 828]

[fol. 828]

625

Russell's Official National Motor Coach Guide, July, 1961

828

TRAILWAYS EASTERN LINES

NORFOLK — RALEIGH — CHARLOTTE

7320

1999

[fol. 829]

Line Number	From	To	Days	Time	Notes
1000	ThruLine North-Birmingham-Dallas				
1001	ThruLine North-Charlotte				
1002	ThruLine North-Memphis				
1003	ThruLine North-Denver				
1004	ThruLine North-Birmingham-Dallas				
1005	ThruLine North-Charlotte				
1006	ThruLine North-Memphis				
1007	ThruLine North-Denver				
1008	ThruLine North-Birmingham-Dallas				
1009	ThruLine North-Charlotte				
1010	ThruLine North-Memphis				
1011	ThruLine North-Denver				
1012	ThruLine North-Birmingham-Dallas				
1013	ThruLine North-Charlotte				
1014	ThruLine North-Memphis				
1015	ThruLine North-Denver				
1016	ThruLine North-Birmingham-Dallas				
1017	ThruLine North-Charlotte				
1018	ThruLine North-Memphis				
1019	ThruLine North-Denver				
1020	ThruLine North-Birmingham-Dallas				
1021	ThruLine North-Charlotte				
1022	ThruLine North-Memphis				
1023	ThruLine North-Denver				
1024	ThruLine North-Birmingham-Dallas				
1025	ThruLine North-Charlotte				
1026	ThruLine North-Memphis				
1027	ThruLine North-Denver				
1028	ThruLine North-Birmingham-Dallas				
1029	ThruLine North-Charlotte				
1030	ThruLine North-Memphis				
1031	ThruLine North-Denver				
1032	ThruLine North-Birmingham-Dallas				
1033	ThruLine North-Charlotte				
1034	ThruLine North-Memphis				
1035	ThruLine North-Denver				
1036	ThruLine North-Birmingham-Dallas				
1037	ThruLine North-Charlotte				
1038	ThruLine North-Memphis				
1039	ThruLine North-Denver				
1040	ThruLine North-Birmingham-Dallas				
1041	ThruLine North-Charlotte				
1042	ThruLine North-Memphis				
1043	ThruLine North-Denver				
1044	ThruLine North-Birmingham-Dallas				
1045	ThruLine North-Charlotte				
1046	ThruLine North-Memphis				
1047	ThruLine North-Denver				
1048	ThruLine North-Birmingham-Dallas				
1049	ThruLine North-Charlotte				
1050	ThruLine North-Memphis				
1051	ThruLine North-Denver				
1052	ThruLine North-Birmingham-Dallas				
1053	ThruLine North-Charlotte				
1054	ThruLine North-Memphis				
1055	ThruLine North-Denver				
1056	ThruLine North-Birmingham-Dallas				
1057	ThruLine North-Charlotte				
1058	ThruLine North-Memphis				
1059	ThruLine North-Denver				
1060	ThruLine North-Birmingham-Dallas				
1061	ThruLine North-Charlotte				
1062	ThruLine North-Memphis				
1063	ThruLine North-Denver				
1064	ThruLine North-Birmingham-Dallas				
1065	ThruLine North-Charlotte				
1066	ThruLine North-Memphis				
1067	ThruLine North-Denver				
1068	ThruLine North-Birmingham-Dallas				
1069	ThruLine North-Charlotte				
1070	ThruLine North-Memphis				
1071	ThruLine North-Denver				
1072	ThruLine North-Birmingham-Dallas				
1073	ThruLine North-Charlotte				
1074	ThruLine North-Memphis				
1075	ThruLine North-Denver				
1076	ThruLine North-Birmingham-Dallas				
1077	ThruLine North-Charlotte				
1078	ThruLine North-Memphis				
1079	ThruLine North-Denver				
1080	ThruLine North-Birmingham-Dallas				
1081	ThruLine North-Charlotte				
1082	ThruLine North-Memphis				
1083	ThruLine North-Denver				
1084	ThruLine North-Birmingham-Dallas				
1085	ThruLine North-Charlotte				
1086	ThruLine North-Memphis				
1087	ThruLine North-Denver				
1088	ThruLine North-Birmingham-Dallas				
1089	ThruLine North-Charlotte				
1090	ThruLine North-Memphis				
1091	ThruLine North-Denver				
1092	ThruLine North-Birmingham-Dallas				
1093	ThruLine North-Charlotte				
1094	ThruLine North-Memphis				
1095	ThruLine North-Denver				
1096	ThruLine North-Birmingham-Dallas				
1097	ThruLine North-Charlotte				
1098	ThruLine North-Memphis				
1099	ThruLine North-Denver				
1100	ThruLine North-Birmingham-Dallas				

1000-ThruLine North-Birmingham-Dallas.
 1001-ThruLine North-Charlotte.
 1002-ThruLine North-Memphis.
 1003-ThruLine North-Denver.

1004-ThruLine North-Birmingham-Dallas.
 1005-ThruLine North-Charlotte.
 1006-ThruLine North-Memphis.
 1007-ThruLine North-Denver.

1008-ThruLine North-Birmingham-Dallas.
 1009-ThruLine North-Charlotte.
 1010-ThruLine North-Memphis.
 1011-ThruLine North-Denver.

All trips operate daily unless otherwise noted.

Source:

Russell's Official National Motor Coach Guide, July 1961

829

I.C.C. Docket No. 21563
Witness: George V. Baylis
Exhibit No. 16 (Revised)

CAROLINA TRAILWAYS

TRAILWAYS EASTERN LINES

BOSTON **RICHMOND** **RALEIGH** **FAYETTEVILLE** **ADDYSTA**
NEW YORK **JACKSONVILLE**

[illegible]

2-**Thru Service.**
 4-**Hot Reservations.**
 6-**Regular Service.**

Men or a—Monday only.
 4—Five Star Service.
 12—Express Service.

1—Via connecting ship.
Sat. or 4—Saturday only.
12—Flag ship on highway.

(DCC) or 4—Queen City Trailways.

late hand.

VIA ROANOKE RAPIDS

READ DOWN				7325		READ UP			
				4-22-61					
7320	4 00	11 30	7325	to New York, N.Y. (EDT) (STN).....	4 20	8 20	10 40	South	11 50
7315	3 45	11 15	7320	to Philadelphia, Pa. (7320).....	4 55	8 55	11 55	North	11 20
7310	3 30	11 00	7315	to Philadelphia, Pa. (7320).....	5 30	9 30	12 30	South	11 00
7305	3 15	10 45	7310	to Washington, Md. (7320).....	6 05	10 05	1 05	North	10 40
7300	3 00	10 30	7305	to Washington, D.C. (STN).....	6 40	10 40	1 40	South	10 20
7255	2 45	10 15	7300	to Washington, D.C. (STN).....	7 15	11 15	2 15	North	10 00
7250	2 30	10 00	7255	to Richmond, Va. (7320).....	7 50	11 50	2 50	South	9 40
7245	2 15	9 45	7250	to Richmond, Va. (7320).....	8 25	12 25	3 25	North	9 20
7240	2 00	9 30	7245	to Richmond, Va. (7320).....	9 00	1 00	4 00	South	9 00
7235	1 45	9 15	7240	to Richmond, Va. (7320).....	9 35	1 35	4 35	North	8 40
7230	1 30	9 00	7235	to Richmond, Va. (7320).....	10 10	2 10	5 10	South	8 20
7225	1 15	8 45	7230	to Richmond, Va. (7320).....	10 45	2 45	5 45	North	8 00
7220	1 00	8 30	7225	to Richmond, Va. (7320).....	11 20	3 20	6 20	South	7 40
7215	0 45	8 15	7220	to Richmond, Va. (7320).....	11 55	3 55	6 55	North	7 20
7210	0 30	8 00	7215	to Richmond, Va. (7320).....	12 30	4 30	7 30	South	7 00
7205	0 15	7 45	7210	to Richmond, Va. (7320).....	1 05	5 05	8 05	North	6 40
7200	0 00	7 30	7205	to Richmond, Va. (7320).....	1 40	5 40	8 40	South	6 20
7155	0 45	7 15	7200	to Richmond, Va. (7320).....	2 15	6 15	9 15	North	6 00
7150	0 30	7 00	7155	to Richmond, Va. (7320).....	2 50	6 50	9 50	South	5 40
7145	0 15	6 45	7150	to Richmond, Va. (7320).....	3 25	7 25	10 25	North	5 20
7140	0 00	6 30	7145	to Richmond, Va. (7320).....	4 00	8 00	11 00	South	5 00
7135	0 45	6 15	7140	to Richmond, Va. (7320).....	4 35	8 35	11 35	North	4 40
7130	0 30	6 00	7135	to Richmond, Va. (7320).....	5 10	9 10	12 10	South	4 20
7125	0 15	5 45	7130	to Richmond, Va. (7320).....	5 45	9 45	12 45	North	4 00
7120	0 00	5 30	7125	to Richmond, Va. (7320).....	6 20	10 20	1 00	South	3 40
7115	0 45	5 15	7120	to Richmond, Va. (7320).....	6 55	10 55	1 45	North	3 20
7110	0 30	5 00	7115	to Richmond, Va. (7320).....	7 30	11 30	2 30	South	3 00
7105	0 15	4 45	7110	to Richmond, Va. (7320).....	8 05	12 05	3 05	North	2 40
7100	0 00	4 30	7105	to Richmond, Va. (7320).....	8 40	12 40	3 40	South	2 20
7095	0 45	4 15	7100	to Richmond, Va. (7320).....	9 15	1 15	4 15	North	2 00
7090	0 30	4 00	7095	to Richmond, Va. (7320).....	9 50	1 50	5 00	South	1 40
7085	0 15	3 45	7090	to Richmond, Va. (7320).....	10 25	2 25	5 45	North	1 20
7080	0 00	3 30	7085	to Richmond, Va. (7320).....	11 00	3 00	6 30	South	1 00
7075	0 45	3 15	7080	to Richmond, Va. (7320).....	11 35	3 35	7 05	North	0 40
7070	0 30	3 00	7075	to Richmond, Va. (7320).....	12 10	4 10	7 40	South	0 20
7065	0 15	2 45	7070	to Richmond, Va. (7320).....	12 45	4 45	8 15	North	0 00
7060	0 00	2 30	7065	to Richmond, Va. (7320).....	1 20	5 20	9 00	South	0 40
7055	0 45	2 15	7060	to Richmond, Va. (7320).....	1 55	5 55	9 45	North	0 20
7050	0 30	2 00	7055	to Richmond, Va. (7320).....	2 30	6 30	10 30	South	0 00
7045	0 15	1 45	7050	to Richmond, Va. (7320).....	3 05	7 05	11 05	North	0 40
7040	0 00	1 30	7045	to Richmond, Va. (7320).....	3 40	7 40	11 40	South	0 20
7035	0 45	1 15	7040	to Richmond, Va. (7320).....	4 15	8 15	12 15	North	0 00
7030	0 30	1 00	7035	to Richmond, Va. (7320).....	4 50	8 50	12 50	South	0 40
7025	0 15	0 45	7030	to Richmond, Va. (7320).....	5 25	9 25	1 25	North	0 20
7020	0 00	0 30	7025	to Richmond, Va. (7320).....	6 00	10 00	2 00	South	0 00
7015	0 45	0 15	7020	to Richmond, Va. (7320).....	6 35	10 35	2 35	North	0 40
7010	0 30	0 00	7015	to Richmond, Va. (7320).....	7 10	11 10	3 10	South	0 20
7005	0 15	0 45	7010	to Richmond, Va. (7320).....	7 45	11 45	3 45	North	0 00
7000	0 00	0 30	7005	to Richmond, Va. (7320).....	8 20	12 20	4 20	South	0 40
6995	0 45	0 15	7000	to Richmond, Va. (7320).....	8 55	12 55	4 55	North	0 20
6990	0 30	0 00	6995	to Richmond, Va. (7320).....	9 30	1 30	5 30	South	0 00
6985	0 15	0 45	6990	to Richmond, Va. (7320).....	10 05	2 05	6 05	North	0 40
6980	0 00	0 30	6985	to Richmond, Va. (7320).....	10 40	2 40	6 40	South	0 20
6975	0 45	0 15	6980	to Richmond, Va. (7320).....	11 15	3 15	7 15	North	0 00
6970	0 30	0 00	6975	to Richmond, Va. (7320).....	11 50	3 50	7 50	South	0 40
6965	0 15	0 45	6970	to Richmond, Va. (7320).....	12 25	4 25	8 25	North	0 20
6960	0 00	0 30	6965	to Richmond, Va. (7320).....	1 00	5 00	9 00	South	0 00
6955	0 45	0 15	6960	to Richmond, Va. (7320).....	1 35	5 35	9 35	North	0 40
6950	0 30	0 00	6955	to Richmond, Va. (7320).....	2 10	6 10	10 10	South	0 20
6945	0 15	0 45	6950	to Richmond, Va. (7320).....	2 45	6 45	10 45	North	0 00
6940	0 00	0 30	6945	to Richmond, Va. (7320).....	3 20	7 20	11 20	South	0 40
6935	0 45	0 15	6940	to Richmond, Va. (7320).....	3 55	7 55	11 55	North	0 20
6930	0 30	0 00	6935	to Richmond, Va. (7320).....	4 30	8 30	12 30	South	0 00
6925	0 15	0 45	6930	to Richmond, Va. (7320).....	5 05	9 05	1 05	North	0 40
6920	0 00	0 30	6925	to Richmond, Va. (7320).....	5 40	9 40	1 40	South	0 20
6915	0 45	0 15	6920	to Richmond, Va. (7320).....	6 15	10 15	2 15	North	0 00
6910	0 30	0 00	6915	to Richmond, Va. (7320).....	6 50	10 50	2 50	South	0 40
6905	0 15	0 45	6910	to Richmond, Va. (7320).....	7 25	11 25	3 25	North	0 20
6900	0 00	0 30	6905	to Richmond, Va. (7320).....	8 00	12 00	4 00	South	0 00
6895	0 45	0 15	6900	to Richmond, Va. (7320).....	8 35	12 35	4 35	North	0 40
6890	0 30	0 00	6895	to Richmond, Va. (7320).....	9 10	1 10	5 10	South	0 20
6885	0 15	0 45	6890	to Richmond, Va. (7320).....	9 45	1 45	5 45	North	0 00
6880	0 00	0 30	6885	to Richmond, Va. (7320).....	10 20	2 20	6 20	South	0 40
6875	0 45	0 15	6880	to Richmond, Va. (7320).....	10 55	2 55	6 55	North	0 20
6870	0 30	0 00	6875	to Richmond, Va. (7320).....	11 30	3 30	7 30	South	0 00
6865	0 15	0 45	6870	to Richmond, Va. (7320).....	12 05	4 05	8 05	North	0 40
6860	0 00	0 30	6865	to Richmond, Va. (7320).....	12 40	4 40	8 40	South	0 20
6855	0 45	0 15	6860	to Richmond, Va. (7320).....	1 15	5 15	9 15	North	0 00
6850	0 30	0 00	6855	to Richmond, Va. (7320).....	1 50	5 50	9 50	South	0 40
6845	0 15	0 45	6850	to Richmond, Va. (7320).....	2 25	6 25	10 25	North	0 20
6840	0 00	0 30	6845	to Richmond, Va. (7320).....	3 00	7 00	11 00	South	0 00
6835	0 45	0 15	6840	to Richmond, Va. (7320).....	3 35	7 35	11 35	North	0 40
6830	0 30	0 00	6835	to Richmond, Va. (7320).....	4 10	8 10	12 10	South	0 20
6825	0 15	0 45	6830	to Richmond, Va. (7320).....	4 45	8 45	12 45	North	0 00
6820	0 00	0 30	6825	to Richmond, Va. (7320).....	5 20	9 20	1 20	South	0 40
6815	0 45	0 15	6820	to Richmond, Va. (7320).....	5 55	9 55	2 55	North	0 20
6810	0 30	0 00	6815	to Richmond, Va. (7320).....	6 30	10 30	3 30	South	0 00
6805	0 15	0 45	6810	to Richmond, Va. (7320).....	7 05	11 05	4 05	North	0 40
6800	0 00	0 30	6805	to Richmond, Va. (7320).....	7 40	11 40	4 40	South	0 20
6795	0 45	0 15	6800	to Richmond, Va. (7320).....	8 15	12 15	5 15	North	0 00
6790	0 30	0 00	6795	to Richmond, Va. (7320).....	8 50	12 50	5 50	South	0 40
6785	0 15	0 45	6790	to Richmond, Va. (7320).....	9 25	1 25	6 25	North	0 20
6780	0 00	0 30	6785	to Richmond, Va. (7320).....	10 00	2 00	7 00	South	0 00
6775	0 45	0 15	6780	to Richmond, Va. (7320).....	10 35	2 35	7 35	North	0 40
6770	0 30	0 00	6775	to Richmond, Va. (7320).....	11 10	3 10	8 10	South	0 20
6765	0 15	0 45	6770	to Richmond, Va. (7320).....	11 45	3 45	8 45	North	0 00
6760	0 00	0 30	6765	to Richmond, Va. (7320).....	12 20	4 20	9 20	South	0 40
6755	0 45	0 15	6760	to Richmond, Va. (7320).....	12 55	4 55	9 55	North	0 20
6750	0 30	0 00	6755	to Richmond, Va. (7320).....	1 30	5 30	10 30	South	0 00
6745	0 15	0 45	6750	to Richmond, Va. (7320).....	2 05	6 05	11 05	North	0 40
6740	0 00	0 30	6745	to Richmond, Va. (7320).....	2 40	6 40	11 40	South	0 20
6735	0 45	0 15	6740	to Richmond, Va. (7320).....	3 15	7 15	12 15	North	0 00
6730	0 30	0 00	6735	to Richmond, Va. (7320).....	3 50	7 50	12 50	South	0 40
6725	0 15	0 45	6730	to Richmond, Va. (7320).....	4 25	8 25	1 25	North	0 20
6720	0 00	0 30	6725	to Richmond, Va. (7320).....	5 00	9 00	2 00	South	0 00
6715	0 45	0 15	6720	to Richmond, Va. (7320).....	5 35	9 35	2 35	North	0 40
6710	0 30	0 00	6715	to Richmond, Va. (7320).....	6 10	10 10	3 10	South	0 20
6705	0 15	0 45	6710	to Richmond, Va. (7320).....	6 45	10 45	3 45	North	0 00
6700	0 00	0 30	6705	to Richmond, Va. (7320).....	7 20	11 20	4 20	South	0 40
6695	0 45	0 15	6700	to Richmond, Va. (7320).....	7 55	11 55	4 55	North	0 20
6690	0 30	0 00	6695	to Richmond, Va. (7320).....	8 30	12 30	5 30	South	0 00
6685	0 15	0 45	6690	to Richmond, Va. (7320).....	9 05	1 05	6 05	North	0 40
6680	0 00	0 30	6685	to Richmond, Va. (7320).....	9 40	1 40	6 40	South	0 20
6675	0 45	0 15	6680	to Richmond, Va. (7320).....	10 15	2 15	7 15	North	0 00
6670	0 30	0 00	6675	to Richmond, Va. (7320).....	10 50	2 50	7 50	South	0 40
6665	0 15	0 45	6670	to Richmond, Va. (7320).....	11 25	3 25	8 25	North	0 20
6660	0 00	0 30	6665	to Richmond, Va. (7320).....	12 00	4 00	9 00	South	0 00
6655	0 45	0 15	6660	to Richmond, Va. (7320).....	12 35	4 35	9 35	North	0 40
6650	0 30	0 00	6655	to Richmond, Va. (7320).....	1 10	5 10	10 10	South	0 20
6645	0 15	0 45	6650	to Richmond, Va. (7320).....	1 45	5 45	10 45	North	0 00
6640	0 00	0 30	6645	to Richmond, Va. (7320).....	2 20	6 20	11 20	South	0 40
6635	0 45	0 15	6640	to Richmond, Va. (7320).....	2 55	6 55	11 55	North	0 20
6630	0 30	0 00	6635	to Richmond, Va. (7320).....	3 30	7 30	12 30	South	0 00
6625	0 15	0 45							

WASHINGTON, N. C.—ENGELHARD

DOWN Operated by Englehard-Washington Bus Line **UP**

Date	Ref.	(RT)		7327	1-1-68	Date	Ref.
			Washington, D.C.			7/10/68	100
			Fairfax			7/10/68	100
			Bethesda			7/10/68	100
			Silver Spring			7/10/68	100
			Germantown			7/10/68	100
			Rockville			7/10/68	100
			New Market			7/10/68	100
			Frederick, Md.			7/10/68	100

FAYETTEVILLE—WASHINGTON, N.C.

DOWN

(EST) 7328 6-12-81

UP

11

[illegible][illegible]

WASHINGTON, N. C.—ENGELHARD					
DOWN Operated by Engelhard-Washington Gas Lines					
Gas	Ref	(WTS) - 7327	1-1-48	Ref	Gas
		Washington, N.C.			
		Petroleum		50	00
		Natural Gas		19	00
		Servicing		19	00
		Propane gas		19	00
		New England		7	40
		Engelhard, N.C.		7	25

FAYETTEVILLE—WASHINGTON, N.C.									
DOWN					UP				
(INT) 7328					6-22-41				
10	40	8	48	1	to Fayetteville, N.C.	(7317)	h		
11	10	7	50	1	to Dunn		h		
11	20	7	52	1	to		h		
11	30	7	54	1	to Smith Hall		h		
11	40	8	56	1	to		h		
11	50	8	58	1	to Wilson	(7317)	h		
12	00	8	00	1	to Wilson	(7318)	h		
12	10	9	02	1	to Farmville		h		
12	20	10	04	1	to Greenville		h		
12	30	10	06	1	to Greenville, N.C.	(7331)	h		

All trips operate daily unless otherwise noted.

Source:

Russell's Official National Motor Coach Guide, July 1961

I.C.C. Docket, No. 21563
 Witness: George V. Baylis
 Exhibit No. 16 (Revised)

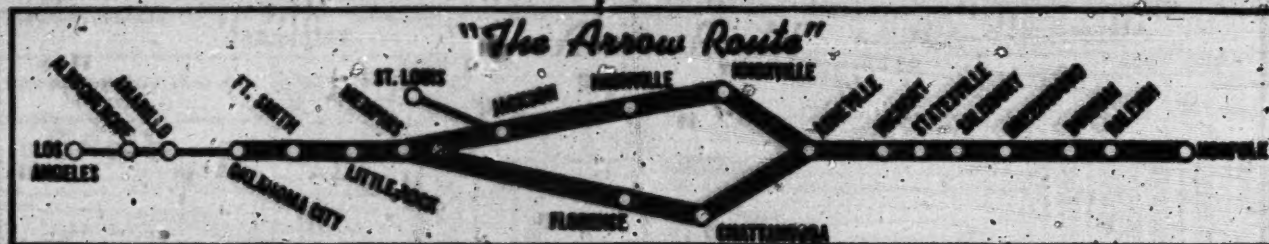
CAROLINA TRAILWAYS

TRAILWAYS EASTERN LINES

BOSTON NEW YORK RICHMOND RALEIGH FAYETTEVILLE AUGUSTA JACKSONVILLE

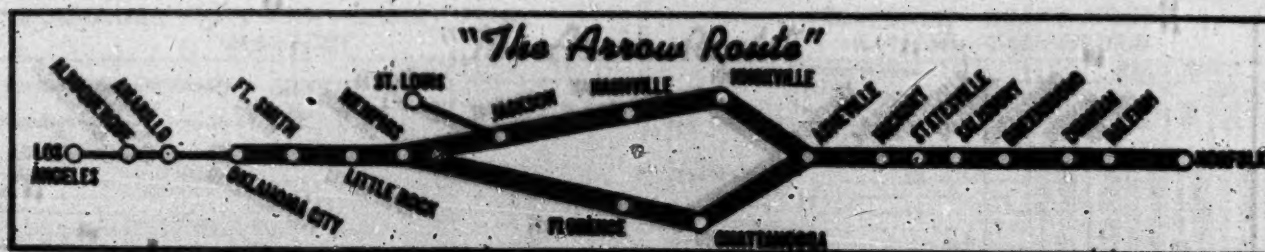
READ DOWN												7325 1-2-3-4												READ UP																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
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	-952	-953	-954	-955	-956	-957	-958	-959	-960	-961	-962	-963	-964	-965	-966	-967	-968	-969	-970	-971	-972	-973	-974	-975	-976	-977	-978	-979	-980	-981	-982	-983	-984	-985	-986	-987	-988	-989	-990	-991	-992	-993	-994	-995	-996	-997	-998	-999	-1000	-1001	-1002	-1003	-1004	-1005	-1006	-1007	-1008	-1009	-1010	-1011	-1012	-1013	-1014	-1015	-1016	-1017	-1018	-1019	-1020	-1021	-1022	-1023	-1024	-1025	-1026	-1027	-1028	-1029	-1030	-1031	-1032	-1033	-1034	-1035	-1036	-1037	-1038	-1039	-1040	-1041	-1042	-1043	-1044	-1045	-1046	-1047	-1048	-1049	-1050	-1051	-1052	-1053	-1054	-1055	-1056	-1057	-1058	-1059	-1060	-1061	-1062	-1063	-1064	-1065	-1066	-1067	-1068	-1069	-1070	-1071	-1072	-1073	-1074	-1075	-1076	-1077	-1078	-1079	-1080	-1081	-1082	-1083	-1084	-1085	-1086	-1087	-1088	-1089	-1090	-1091	-1092	-1093	-1094	-1095	-1096	-1097	-1098	-1099	-1100	-1101	-1102	-1103	-1104	-1105	-1106	-1107	-1108	-1109	-1110	-1111	-1112	-1113	-1114	-1115	-1116	-1117	-1118	-1119	-1120	-1121	-1122	-1123	-1124	-1125	-1126	-1127	-1128	-1129	-1130	-1131	-1132	-1133	-1134	-1135	-1136	-1137	-1138	-1139	-1140	-1141	-1142	-1143	-1144	-1145	-1146	-1147	-1148	-1149	-1150	-1151	-1152	-1153	-1154	-1155	-1156	-1157	-1158	-1159	-1160	-1161	-1162	-1163	-1164	-1165	-1166	-1167	-1168	-1169	-1170	-1171	-1172	-1173	-1174	-1175	-1176	-1177	-1178	-1179	-1180	-1181	-1182	-1183	-1184	-1185	-1186	-1187	-1188	-1189	-1190	-1191	-1192	-1193	-1194	-1195	-1196	-1197	-1198	-1199	-1200	-1201	-1202	-1203	-1204	-1205	-1206	-1207	-1208	-1209	-1210	-1211	-1212	-1213	-1214	-1215	-1216	-1217	-1218	-1219	-1220	-1221	-1222	-1223	-1224	-1225	-1226	-1227	-1228	-1229	-1230	-1231	-1232	-1233	-1234	-1235	-1236	-1237	-1238	-1239	-1240	-1241	-1242	-1243	-1244	-1245	-1246	-1247	-1248	-1249	-1250	-1251	-1252	-1253	-1254	-1255	-1256	-1257	-1258	-1259	-1260	-1261	-1262	-1263	-1264	-1265	-1266	-1267	-1268	-1269	-1270	-1271	-1272	-1273	-1274	-1275	-1276	-1277	-1278	-1279	-1280	-1281	-1282	-1283	-1284	-1285	-1286	-1287	-1288	-1289	-1290	-1291	-1292	-1293	-1294	-1295	-1296	-1297

TRAILWAYS THRU ROUTE SERVICE



NORFOLK—RALEIGH—ASHEVILLE **KNOXVILLE**
CHATTANOOGA **MEMPHIS—OKLAHOMA CITY** **AMARILLO**
LOS ANGELES

[illegible]



NORFOLK — RALEIGH — ASHEVILLE — KINGSVILLE — MEMPHIS — OKLAHOMA CITY — AMARILLO — LOS ANGELES

ROAD DOWN				ROAD UP			
7036							
Day	Time	Stop	Time	Day	Time	Stop	Time
1	11:30	Los Angeles	11:30	1	11:30	Los Angeles	11:30
1	12:00	Amarillo	12:00	1	12:00	Amarillo	12:00
1	12:30	Oklahoma City	12:30	1	12:30	Oklahoma City	12:30
1	13:00	Little Rock	13:00	1	13:00	Little Rock	13:00
1	13:30	St. Louis	13:30	1	13:30	St. Louis	13:30
1	14:00	St. Paul	14:00	1	14:00	St. Paul	14:00
1	14:30	Minneapolis	14:30	1	14:30	Minneapolis	14:30
1	15:00	Chicago	15:00	1	15:00	Chicago	15:00
1	15:30	Kansas City	15:30	1	15:30	Kansas City	15:30
1	16:00	St. Louis	16:00	1	16:00	St. Louis	16:00
1	16:30	Chicago	16:30	1	16:30	Chicago	16:30
1	17:00	St. Paul	17:00	1	17:00	St. Paul	17:00
1	17:30	Minneapolis	17:30	1	17:30	Minneapolis	17:30
1	18:00	Little Rock	18:00	1	18:00	Little Rock	18:00
1	18:30	Oklahoma City	18:30	1	18:30	Oklahoma City	18:30
1	19:00	Amarillo	19:00	1	19:00	Amarillo	19:00
1	19:30	Los Angeles	19:30	1	19:30	Los Angeles	19:30
2	11:30	Los Angeles	11:30	2	11:30	Los Angeles	11:30
2	12:00	Amarillo	12:00	2	12:00	Amarillo	12:00
2	12:30	Oklahoma City	12:30	2	12:30	Oklahoma City	12:30
2	13:00	Little Rock	13:00	2	13:00	Little Rock	13:00
2	13:30	St. Louis	13:30	2	13:30	St. Louis	13:30
2	14:00	St. Paul	14:00	2	14:00	St. Paul	14:00
2	14:30	Minneapolis	14:30	2	14:30	Minneapolis	14:30
2	15:00	Chicago	15:00	2	15:00	Chicago	15:00
2	15:30	Kansas City	15:30	2	15:30	Kansas City	15:30
2	16:00	St. Louis	16:00	2	16:00	St. Louis	16:00
2	16:30	Chicago	16:30	2	16:30	Chicago	16:30
2	17:00	St. Paul	17:00	2	17:00	St. Paul	17:00
2	17:30	Minneapolis	17:30	2	17:30	Minneapolis	17:30
2	18:00	Little Rock	18:00	2	18:00	Little Rock	18:00
2	18:30	Oklahoma City	18:30	2	18:30	Oklahoma City	18:30
2	19:00	Amarillo	19:00	2	19:00	Amarillo	19:00
2	19:30	Los Angeles	19:30	2	19:30	Los Angeles	19:30

Source:

Russell's Official National Motor Coach Guide, July 1961

[fol. 833]

NORTH CAROLINA COUNTIES THAT DO NOT
HAVE RAIL PASSENGER SERVICE (50 OUT
OF A TOTAL OF 100 COUNTIES)

<u>COUNTY</u>	<u>LAND AREA (SQ. MILES)</u>	<u>POPULATION (1960)</u>
Cherokee	454	16,335
Graham	289	6,432
Clay	213	5,526
Macon	517	14,935
Swain	530	8,387
Jackson	496	17,780
Haywood	543	39,711
Transylvania	379	16,372
Yancey	311	14,008
Rutherford	566	45,091
Cleveland	466	66,048
Lincoln	308	28,814
Mitchell	220	13,906
Avery	247	12,009
Caldwell	476	49,552
Watauga	320	17,529
Ashe	427	19,768
Alleghany	230	7,734
Wilkes	765	45,269
Surry	537	48,205
Union	643	44,670
Anson	533	24,962
Randolph	801	61,497
Stokes	459	22,314
Person	400	26,394
Granville	543	33,110
Onslow	756	82,706
Lenoir	391	55,276
Craven	725	58,773
Greene	269	16,741
Hertford	356	22,718
Bertie	693	24,350
Currituck	273	6,601
Camden	239	5,598

[fol. 834]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-13

NORTH CAROLINA COUNTIES THAT DO NOT
HAVE RAIL PASSENGER SERVICE (50 OUT
OF A TOTAL OF 100 COUNTIES)

<u>COUNTY</u>	<u>LAND AREA (SQ. MILES)</u>	<u>POPULATION (1960)</u>
Cherokee	454	16,335
Graham	289	6,432
Clay	213	5,526
Macon	517	14,935
Swain	530	8,387
Jackson	496	17,780
Haywood	543	39,711
Transylvania	379	16,372
Yancey	311	14,008
Rutherford	566	45,091
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Randolph	801	61,497
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Person	400	26,394
Granville	543	33,110
Onslow	756	82,706
Lenoir	391	55,276
Craven	725	58,773
Greene	269	16,741
Hertford	356	22,718
Bertie	693	24,350
Currituck	273	6,601
Camden	239	5,598
Pasquotank	229	25,630
Perquimans	261	9,178
Chowan	180	11,729
Gates	343	9,254

[fol. 834]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT H-13

Continued

<u>COUNTY</u>	<u>LAND AREA</u> <u>(SQ. MILES)</u>	<u>POPULATION</u> <u>(1960)</u>
Dare	388	5,935
Tyrell	399	4,520
Washington	336	13,488
Martin	481	27,139
Beaufort	831	36,014
Pamlico	341	9,850
Carteret	532	30,940
Hyde	634	5,765
Craven	725	58,773
Jones	467	11,005
Sampson	963	48,013
Bladen	879	28,881
Totals -	23,364	1,315,235
Percent of State Total -	47.5%	28.8%

Southern Coach Company

Louis M. Wade, President
121 E. Patterson Street, Durham, N.C.

DURHAM - FURNIVY - DUNN - CLINTON - WILMINGTON
AND RALEIGH - FURNIVY - DUNN - CLINTON - WILMINGTON

READ DOWN					3044	READ UP				
1-25-41					1-25-41	1-25-41				
1	2	3	4	5	1	2	3	4	5	
6	7	8	9	10	6	7	8	9	10	
11	12	13	14	15	11	12	13	14	15	
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Southern Coach Company

Lester E. Wade, President

121 N. Footprint Street, Durham, N.C.

DURHAM-FURRY-DURHAM-CLINTON-WILMINGTON

AND SALEM-FURRY-DURHAM-CLINTON-WILMINGTON

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[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
C-158-D-62

STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE DURHAM CHAMBER OF COMMERCE, INCORPORATED; RESEARCH TRIANGLE INSTITUTE; ERWIN MILLS, INC.; and MARY TRENT SEMANS, Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; and SOUTHERN RAILWAY COMPANY, Defendants.

Thomas Wade Bruton and Charles W. Barbee for State of North Carolina; E. C. Bryson for Duke University; F. Gordon Battle and Victor S. Bryant for Durham Chamber of Commerce and Research Triangle; A. H. Graham, Jr. for Erwin Mills; and E. C. Brooks, Jr. for Mary Trent Semans

H. Neil Garson and William H. Murdock, District Attorney, for United States of America; H. Neil Garson for Interstate Commerce Commission; and Joyner and Howison, Major L. P. McLendon, James A. Bistline, and Earl E. Eisenhart, Jr. for Southern Railway Company

Before Bell, Circuit Judge, and Craven and Preyer, District Judges.

OPINION—October 19, 1962

L. RICHARDSON PREYER, District Judge

This is an action brought under USC Title 28, Section 1336, in accordance with USC Title 28 Sections 1938, 2284 and 2321-2325. Its purpose is to set aside and enjoin en-

forcement of an order of the ICC granting Southern Rail-
[fol. 838] way Co. the right to discontinue all remaining
passenger service between Greensboro, N.C. and Golds-
boro, N.C. Acting under U.S.C. Title 49 Section 13a(2),¹
the Commission found that (1) the present or future pub-
lic convenience and necessity permit such discontinuance,
and (2) continuance of the operation would constitute an
unjust and undue burden on interstate operations of the
carrier and upon interstate commerce.

[fol. 839] On July 18, 1959, Southern Railway Company
filed a petition with the North Carolina Utilities Commis-
sion for discontinuance of its trains Nos. 13 and 16 which
are the last passenger trains operating between Goldsboro
and Greensboro, North Carolina. Actually, only one train
is involved, it being designated No. 16 in one direction and
No. 13 on the return trip.

Train No. 16 leaves Greensboro daily at 6:10 a.m., makes
twelve regular stops and arrives in Goldsboro at 10:45
a.m. Its principal stops are Burlington, Durham, Raleigh,
and Selma.

¹ Section 13a(2) provides that:

Where the discontinuance or change, in whole or in part, by
a carrier or carriers subject to this chapter, of the operation
or service of any train or ferry operated wholly within the
boundaries of a single state is prohibited by the constitution
or statutes of any state or where the state authority having
jurisdiction thereof shall have denied an application or pe-
tition duly filed with it by said carrier or carriers for au-
thority to discontinue or change, in whole or in part, the
operation or service of any such train or ferry or shall not
have acted finally on such an application or petition within
one hundred and twenty days from the presentation thereof,
such carrier or carriers may petition the Commission for
authority to effect such discontinuance or change. When any
petition shall be filed with the Commission under the pro-
visions of this paragraph the Commission shall notify the
Governor of the state in which such train or ferry is operated
at least thirty days in advance of the hearing provided for
in this paragraph, and such hearing shall in which such train
or ferry is operated; and the Commission is authorized to avail
itself of the cooperation, services, records, and facilities of
the authorities in such state in the performance of its func-
tions under this paragraph.

Train No. 13 leaves Goldsboro daily at 4:05 p.m. and arrives in Greensboro at 8:50 p.m. with similar stops along the route.

A sleeping car is attached to the train and by connection with other trains at Greensboro there is service to and from Washington, New York, and other major centers along the Eastern Seaboard.

These trains carry express but no freight or mail. The coaches have a capacity of 80 passengers. In addition, there is a 6 bedroom, ten-roomette sleeping car. There are six employees paid by the railroad servicing the train.

After hearings, the State Commission denied the application. Southern appealed to the North Carolina Superior Court, which affirmed the decision, and then to the Supreme Court of North Carolina which also affirmed. *Utilities Comm. v. R.R.*, 254 NC 73, 118 S.E. 2d 21 (1961).

On April 16, 1962, Southern filed a petition with the Interstate Commerce Commission under Section 13a(2) [fol. 840] of the Interstate Commerce Act, again seeking authority to discontinue the trains. The State of North Carolina and the other protestants were allowed to intervene.

The entire records of the hearings before the North Carolina State Utilities Commission, the North Carolina Superior Court, and the North Carolina Supreme Court were made a part of the record for consideration by the Interstate Commerce Commission.

The proceedings were referred to an ICC Examiner who, after holding hearings, recommended that the discontinuance be allowed. On July 2, 1962, Division 3 of the ICC issued an Order adopting the findings and conclusions of the Examiner and authorizing the discontinuance of the trains. A petition for reconsideration was denied by the ICC. This action followed.

ISSUES DISMISSED

At the threshold of the case, plaintiffs raise certain legal questions which, if meritorious, would require dismissal of the ICC Order without reaching the substantive aspects of the case. Specifically, plaintiffs attack the constitutionality

of section 13a(2); they claim a defect in the giving of notice of the discontinuance, as required by law; they contend that a lease from the North Carolina Railroad Corporation to the Southern Railway Company requires the continuance of these operations; and they claim that the decision of the North Carolina Supreme Court is res judicata on the issues, and that the ICC cannot make a [fol. 841] contrary determination without a showing of changes in the surrounding circumstances that occurred after the North Carolina Supreme Court decision. We think all of these arguments are without merit.

Plaintiffs' attack on the constitutionality of section 13a(2) is without merit. The scope of the commerce power is such that there is little room for doubt of the constitutionality of an act allowing the ICC to eliminate intrastate operations that adversely affect interstate commerce. *Gibbons v. Ogden*, 9 Wheat. (22 U.S.) 16 L. Ed. 23 (1824); *Wickard v. Filburn*, 317 U.S. 111 (118), 63 S. Ct. 82, 87 L. Ed. 122 (1942); *Wisc. R.R. Com. v. Chicago, Burlington and Quincy R.R. Co.*, 257 U.S. 563, 42 S. Ct. 232, 66 L. Ed. 371 (1922); (589-590); *Colorado v. U. S.*, 271 U.S. 153 (163, 165-166), 46 S. Ct. 452, 70 L. Ed. 878 (1926). We find section 13a(2) constitutional.

As to plaintiffs' claim of a defect in notice, it is clear that the claim is based on an oversight by the ICC in failing to change a reference in 49 CFR 43.6 when 49 CFR 43.5 was amended and renumbered. Section 13a(2) merely requires that the ICC notify the Governor of the state in which the train is operating. No further notice is required under section 13a(2) or under the commission regulations. We find that all requirements pertaining to notice have been met.

Plaintiffs further allege that the discontinuance of the trains in question would constitute a breach of the Lease Agreement between the Southern Railway Company and the North Carolina Railroad Company, dated August 16, [fol. 842] 1895, and, consequently, that it is unlawful for the ICC to authorize such discontinuance. But no obligation to require the Southern to operate passenger trains over the lines leased from the North Carolina Railroad can be unambiguously spelled out of the lease. Furthermore,

this issue was not raised before the ICC, and it should not be raised here for the first time. *Carolina Scenic Coach Lines v. United States et al.*, 56 Fed. Supp. 801 (803-804). (W.D. N.C. 1944); *Unemployment Comp. Com. v. Aragon*, 329 U.S. 143 (155), 67 S. Ct. 245, 91 L. Ed. 136 (1946); *Davis Administrative Law Treatise*, Section 20.06. Besides, the paramount power of Congress to regulate interstate commerce forces even express charter or lease provisions to give way before it. This has been held many times and is no longer in question, *Colorado v. United States*, 271 U.S. 153 (165-166), 46 S. Ct. 452, 70 L. Ed. 878 (1926); *Texas v. United States*, 292 U.S. 522, 531, 54 S. Ct. 819, 78 L. Ed. 1402 (1934); *Moeller v. Interstate Commerce Commission*, 201 F. Supp. 583 (S. D. Iowa, 1962); *Burke County, Georgia v. United States*, C.A. 1031 (S.D. Georgia, July 2, 1962, opinion not published).

Plaintiffs also seek to invoke the doctrine of res judicata to bar the ICC from considering the question of public convenience and necessity, alleging that this issue has been determined by the North Carolina Supreme Court in *State of North Carolina v. Southern Railway Company*, 254 N.C. 73, 118 S.E. 2d 21 (1961). This position cannot be sustained. Res judicata is a common law device to prevent litigation of [fol. 843] matters already litigated between the same parties or those in privity with them. *United States v. California Bridge & C. Co.*, 245 U.S. 337 (341), 38 S. Ct. 91, 62 L. Ed. 332 (1917). It is clear that a statute may change this common law rule. The statute before us, section 13a (2), provides "... [W]here the State authority having jurisdiction thereof shall have denied an application ... for authority to discontinue ... , [the] carrier ... may petition the [Interstate Commerce] Commission for authority ... the Commission may grant such authority only after a full hearing and upon findings by it ... " Since the statute requires the ICC to hold full hearings and to make findings, after a state decision, it seems quite clear that Congress did not intend for the state hearing to have res judicata effect. Cf. *Sprague v. Wall*, 7 Cir., 122 F. 2d 128 (1941); *NLRB v. Pacific*, 8 Cir., 228 F. 2d 170, 176 (1956). This interpretation is reinforced by the legislative history of section 13a(2) which shows that Congress was motivated

by a belief that State authorities were unduly regressive in that they often required continuance of uneconomic and unnecessary service. (S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22, H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958), pp. 11-12). The conclusion follows that Congress did not intend the ICC to give State determinations res judicata or collateral estoppel effect.

We proceed to the substantive issue in the case.

[fol. 844]

ISSUES INVOLVED

The central issue in the case is whether the order of the ICC authorizing discontinuance of the two trains is warranted in law and is supported by adequate findings based on substantial evidence of record.

Judicial review of an order of the ICC is limited. We may not set aside the ultimate findings of the Commission unless they are unsupported by substantial evidence on the record considered as a whole, involve error of law, or are arbitrary or capricious or constitute an abuse of discretion. Administrative Procedure Act, 5 U.S.C.A. §1009 (e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 95 L. Ed. 456, 71 S.Ct. 456 (1950); *Carolina Scenic Coach Lines v. United States*, 56 F. Supp. 801, 804 (W.D. N.C. 1944), aff'd 323 U.S. 678, 65 S. Ct. 277, 89 L. Ed. 550 (1944). It is not the function of this court to appraise the conflicting testimony or other evidence, to judge the credibility of witnesses and to determine the weight of the evidence. A court "cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, that has support in the record and the applicable law." *U.S. v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536, 66 S. Ct. 687, 90 L. Ed. 821 (1946). But the order must be reversed if the Commission in arriving at its determination departed from the applicable rules of law and if its finding was arbitrary and capricious and had no basis in substantial evidence on the record as a whole.

[fol. 845] Plaintiffs contend that the conclusions of the Commission must fall because made under a mistake of

law. Specifically, they argue that the Commission's conclusion that the continued operations would constitute "an unjust and undue burden upon the interstate operations of Southern Railroad and upon interstate commerce" was made without considering the over-all prosperity of the carrier and the total operations of the carrier on the line involved, and that in such failure lies error. We think plaintiffs' position is well-taken.

As a matter of law, we think that the ICC cannot be said to have made a proper finding unless it takes into account the profits that the Southern Railway makes in its freight operations on the same intrastate line. *Chicago, M. St. P. & P.R. Co. v. Illinois*, 355 U.S. 300, 78 S. Ct. 304, 2 L. Ed. 2d 292 (1958); *Public Service Com. of Utah v. United States*, 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886 (1958). Unless this is taken into account, the full weight of the burden placed upon interstate commerce by these intrastate operations cannot be determined. *Chicago* and *Utah* cases, *supra*. At the time of the decision of the Supreme Court in *Chicago, M. St. P. & P.R. Co. v. Illinois*, *supra*, Title 49 U.S.C. section 13(4) provided that the ICC could change intrastate railway rates where they discriminated against interstate commerce in favor of intrastate commerce. The Supreme Court in the *Chicago* case held that the true nature of the burden on interstate commerce caused by discriminatory rates could not be assessed unless the other revenues in that state were taken into account. As stated [fol. 846] by the Supreme Court, (P. 305): "the occasion for the exercise of the federal power asserted by section 13(4) is the necessity for effecting the required contribution by intrastate traffic of its proportionate share of the revenues necessary to pay a carrier's operating costs and yield a fair return." In order to determine the burdens on interstate commerce caused by an intrastate loss, it is necessary to take into account intrastate profits. Cf. *North Carolina v. U.S.*, 325 U. S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760 (1945).

If losses in an intrastate operation are so exceeded by profits of intrastate operation of the same general type in the same state, so as to pay operating expenses and yield a high profit, the net effect on interstate operations is not

a burden on interstate commerce. If the ICC is then to cut off all of the intrastate operations that suffer a loss, while retaining all others, the result would be to require the intrastate operations to bear more than their share. The intent of Congress was to prevent burdens on interstate commerce, not require tribute therefor.

It must be remembered that the state has a legitimate interest in intrastate commerce—"intrastate rates are primarily the state's concern and federal power is 'dominant 'only so far as necessary to alter rates which injuriously affect interstate transportation.' *North Carolina v. U.S.*, supra, at 511 . . . [justification for the exercise of this exceptional federal power] must 'clearly appear'", *Chicago, M. St. P. & P.R. Co.*, supra. To find that segment of intra-[fol. 847] state operations represents an ultimate "burden" upon interstate commerce without reference to the question of whether intrastate operations generally on the same line make it such a burden might permit the entire field of intrastate operations to be federally arrogated by a separate treatment of segments unrelated to the net or total effects.

The *Chicago* and the *Utah* cases cited above are rate and revenue cases brought under section 13(4) rather than discontinuance cases under section 13a(2). It is clear, however, that section 13(4) cases furnish analogous authority for section 13a(2) cases. The "unjust and undue burden" standard contained in section 13a(2) derives from section 13(4) of the Act and from judicial decisions relating to the power of the Commission to prescribe intrastate rates which impose an unjust or undue burden on interstate commerce. In section 13a(2) Congress also intended to prevent burdens on interstate commerce by intrastate operations that do not bear their full share of costs and profit. S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22; H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958), pp. 11-12. Indeed, section 13a(2) cases stand in a fortiori relationship to section 13(4) cases. For to allow passenger service to be abandoned, in this case altogether, as contrasted to raising passenger fares, involves a far more serious incursion upon the traditional rights of the states. See *Southern Railroad Co. v. South Carolina Public Ser-*

vice Company, et al., 31 F. Supp. 707, 710 (E.D. S.C. 1940). [fol. 848] But defendants contend that the authority of the *Chicago* and the *Utah* cases cited above has been vitiated by the amendment to section 13(4), 75 Stat. 570 Pub. L. 85-625 section 4, an amendment which was keyed directly to these cases. The amendment was enacted on August 12, 1958; *Chicago* was handed down in January of 1958 and *Utah* in May of 1958. Section 13(4) was amended to allow the ICC to make a determination that intrastate railway rates discriminated against interstate commerce "without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier . . . wholly within any state."²

[fol. 849] In our opinion, the amendment to section 13(4) does not overturn the existing law applicable to discontinuance cases. Section 13a(2) was enacted at the same time that section 13(4) was amended. At that time, the purpose of amending section 13(4) was fresh in the minds of Congress. If Congress had decided not to require the ICC to take into account the net result of the total operations of

² Section 13(4) was amended by the addition of the italicized portions:

"Section 13, par. (4) Duty of Commission where State regulations result in discrimination. Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice caused any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (*which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier or group of carriers wholly within any State*), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden * * *"

the intrastate lines in discontinuance cases as well as rate and revenue cases, it would have been easy to have amended proposed section 13a(2) just as section 13(4) was amended. This was not done.³

In any event, all that the major addition to section 13(4) does is to provide that the ICC may . . . make their determination "without a separation of interstate and intrastate property, revenues and expenses, and without considering in totality the operation or results thereof of any carrier . . . wholly within any state." This seems to mean that the Commission may decide without having to look into the above matter. However, where, as in this case, the matter was presented to the ICC, it would not seem likely that Congress intended the ICC to ignore these factors. The new provision indicates that the ICC may [fol. 850] make a decision under section 13(4) without considering the totality of intrastate operations when the facts as to totality of intrastate operations have not been presented to the Commission by the parties. However, where they are presented, they should be taken into account. The permissive phraseology of the section would appear to us to mean that a decision of the Commission will not be upset simply because it fails to find specifically these facts where they have not been put in issue by the evidence before the Commission, but this does not mean that such facts where relevant and pertinent are not to be considered.⁴

³ It has been argued that since Congress amended section 13(4) to add the words "undue burden", and at the same time enacted section 13a(2) using the words "undue burden", Congress intended that the new provisions of section 13(4) were to be applied to section 13a(2). In other words, the argument is that the new addition to section 13(4) became a definition of "undue burden". However, it would appear more likely that the major amendment to section 13(4) was a grant of additional power to the ICC in applying section 13(4), rather than a new definition of "undue burden."

⁴ Another possible interpretation of the amendment is that it allows the ICC to make a change in rates without considering the overall statewide totality of a carrier's results—i.e. without considering *all* rates within a state—but does not mean that the totality of operations on the particular line in question should

[fol. 851] This interpretation of the amendment to section 13(4) is the one adopted by the courts. In *Utah Citizens Rate Association v. United States*, 192 F. Supp. 12 (D. Utah 1961), the three judge court stated at p. 18 that "We believe that a matter of procedure rather than any substantive change in the basic transportation policy of the Congress is involved [in the amendment]. If this were not so, serious conceptual and constitutional, and further practical difficulties, would be invited The legislative history of the amendment bolsters this view." *Utah* was affirmed per curiam in 365 U.S. 649, 81 S. Ct. 834, 5 L. Ed. 2d 857 (1961).

It would, therefore, appear that when making a determination under section 13a(2) to discontinue one type of

not be considered. See Conf. Report, Administrative News, 85th Cong. 2d Sess., at pps. 3484-5:

"The amendment (to section 13(4)) deals only with the nature of the evidence to support such a finding. By two recent decisions of the Supreme Court (*Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. State of Illinois* (January 13, 1958), 355 U.S. 300, 356 U.S. 906, 78 S. Ct. 304, 665, and *Public Service Commission of Utah v. United States* (May 19, 1958), 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886), the Commission is required to consider the entire State operation, freight and passenger, in determining whether or not the intrastate freight rates were causing an undue revenue discrimination against interstate commerce. If the holdings in these cases mean that the required finding of—

undue, unreasonable, or unjust discrimination against or undue burden on, interstate or foreign commerce—

can be made only in the light of the overall statewide totality of a carrier's operating results derived from its entire body of rates applicable within the State, it would preclude the Commission from making such a finding on a showing of only the effect of the particular rate or rates in question. The Commission could not, under such an interpretation, continue to function effectively in removing unjust discrimination against interstate commerce caused by interstate rates and charges The above three amendments to paragraph (4) of section 13 do not vest the Commission with jurisdiction that it does not have today but deal with procedures in the exercise of that jurisdiction better to strengthen the protection of interstate commerce as designed in this provision of the act."

service on a line, where such facts are pertinent and relevant, and especially when such facts are before the Commission, the ICC must take into account the revenues from all services on the line. Without taking this into account, an interference of this nature into the completely intrastate affairs of any state based upon the burden that state has placed upon interstate commerce cannot be supported.

Both the Trial Examiner's Report and the decision of the ICC below indicate that they did not take this factor into account. The following appears at pages 11 and 12 of the Examiner's Report:

"At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,699, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the examiner disagrees."

[fol. 852] On appeal, Division 3 of the ICC followed the Examiner's position (at pp. 4, 5):

"But, interveners argue, petitioner's net income from freight traffic over the line is such that over-all profitable operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in an unconstitutional application of the provisions of the statute. In short, interveners allege that petitioner's net income from its freight operations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the intent of Congress under the statute here involved. By analogy, interveners'

view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act."

The ICC then states the rule to be as follows (p. 5):

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposed an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

The examiner and the ICC have misconstrued the intent of Congress and the contentions of the plaintiffs, as well as the applicable law. It is a non-sequitur to say that "by analogy, interveners' plaintiffs view would require a determination that overall losses have resulted on traffic handled over the line." Plaintiffs do not contend—and it is not the law—that there can be no discontinuance unless freight and passenger service considered together show a net loss. Rather, plaintiffs' contention is that the \$630,000 freight profit is a factor to be considered in determining whether the \$90,000 passenger loss on the same line constitutes an unjust and undue burden on interstate commerce. Whether there is a net profit or net loss is not necessarily the controlling factor, but the amount of the net profit or net loss is a factor to be considered. Whether the operation of the passenger service is a burden on interstate commerce and whether there is any longer a public need sufficient to justify the financial losses involved are questions not susceptible of scientific measurement or exact formulae but are questions of degree and involve the balancing of conflicting interests. All material factors bearing on the questions must be taken into account, the ICC

² Quoting from *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 ICC 531.

must consider a fair picture.* Because Congress has expressed concern over the financial conditions of railway passenger service does not justify a reading of their intent to mean that if a segment of passenger service shows a loss, it is unnecessary to consider all other relevant factors, including the freight profits on the same line, to determine whether the loss constitutes a burden on interstate commerce.

[fol. 854] We hold, then, that the Commission should have considered the relative amount of profit on one service and loss on the other in making its finding of whether the passenger service here involved constituted an undue burden on interstate commerce.

SUBSTANTIAL EVIDENCE ON THE RECORD

In order to allow discontinuance under section 13a(2) the Commission must find, based on substantial evidence on

* See *Colorado v. United States*, 271 U.S. 153, 168-9; 70 L. Ed. 878, 885. (Brandeis, J): "In many cases, it is clear that the extent of the whole traffic, the degree of dependence of the communities directly affected upon the particular means of transportation, and other attendant conditions, are such that the carrier may not justly be required to continue to bear the financial loss necessarily entailed by operation. In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier. The problem and the process are substantially the same in these cases as where the conflict is between the needs of intrastate and of interstate commerce. Whatever the precise nature of these conflicting needs, the determination is made upon a balancing of the respective interests—the effort being to decide what fairness to all concerned demands. In that balancing the fact of demonstrated prejudice to interstate commerce and the absence of earnings adequate to afford reasonable compensation are, of course, relevant and may often be controlling. But the act does not make issuance of the certificate dependent upon a specific finding to that effect."

⁷ All relevant factors are considered in fixing freight rates. Southern has received six increases in freight rates since 1951, in all of which the size of passenger deficits were taken into account. ICC Record, Vol. 11, pp. 197-200.

the record as a whole, that (a) the present or future public convenience and necessity permit of such discontinuance, and (b) the continued operation or service without discontinuance in whole or in part, will constitute an unjust and undue burden upon the interstate operation of such carrier or upon interstate commerce. Title 49 USC section 13a(2).

The use of the words "undue" and "unjust" must mean that there are permissible burdens, that is, "due" and "just" burdens. There is an interrelation between findings (a) and (b). To make a determination, the Commission must weigh the public convenience and necessity against the burdens.

What then is the public convenience and necessity to be served by this railroad.

The record discloses that the two trains in question are the last remaining east-west passenger trains between Goldsboro and Greensboro, North Carolina. Until September 1954 Southern operated three pairs of passenger trains on this line. One pair of trains was discontinued in [fol. 855] 1954 and another pair in 1958 which reduced the passenger service to trains Nos. 13 and 16 which are involved in this proceeding. The principal public convenience presently afforded by these trains arises from the interconnecting service at Greensboro with north-south trains on Southern's main line. The pullman service furnishes convenient overnight travel to New York and other East Coast cities, allowing a full working day to the traveler and thus conserving work time. A number of witnesses pointed out the superior convenience of this service to travel by air.

The City of Durham has the largest natural interest in the use of the trains, 48% of the passengers embarking or leaving the trains there. This city has a population of 78,302. A witness for the railroad could recall only five cities in the United States with a population in excess of 70,000 that are without rail passenger service. The discontinuance of these trains would leave Durham County (1960 population 111,995), Alamance County (1960 population 85,674), and Orange County (1960 population

42,970) without any rail passenger service.* These three counties with a total population of 240,639 are located in the industrial Piedmont section of North Carolina.

The witnesses who testified at the hearings as to the need of these trains included:

[fol. 856] 1. Four members of the U. S. Army assigned to the Office of Ordnance Research located at Duke University who testified that the continuation of the trains was necessary for the satisfactory performance of their duties (relating to anti-missile missile work). Their individual annual use of the train was fifteen to twenty trips a year.

2. Two students at Duke University testified as to their and other students' use and need of the trains.

3. Professors from Duke University and the University of North Carolina who testified as to the need of the trains in carrying on their duties.

4. Patients at Duke Hospital who testified as to the medical necessity of the trains in getting to and from their home in New York to the hospital.

5. Testimony of a Research Chemist from Philadelphia, Pennsylvania, as to his use and need for the transportation.

6. A textile executive from New York City whose company owns a mill in Durham testified as to his necessity for the use of the trains.

7. The Director of Transportation for Burlington Industries, Inc., Burlington, North Carolina, testified as to the need for the trains both for employees of the company and for buyers, suppliers and technical people visiting the [fol. 857] plants of the company."

* Fifty of North Carolina's 100 counties are without passenger rail service. Durham County is 1/3 larger in population than the largest county without such service. Record before North Carolina Supreme Court, p. 259.

" 30-40 employees of Burlington Industries are "regular" users, averaging approximately one trip a month each. Customers and buyers (especially women buyers) also use the train. Burlington

8. The President of the Research Triangle Institute, a recently established nonprofit organization providing research service to corporations, governmental agencies and foundations, testified as to the use and need of the trains by his staff, and that the continued operation of the trains was extremely important to the proper functions of his organization. The Institute staff consists of 86 full time members today; it is anticipated that this figure will be 170 by the end of 1962.

9. The President of the Golden Belt Manufacturing Company of Durham testified as to his use and need of the train. This witness explained the necessity for train travel in the operation of his business.

10. The President of the Burlington Chamber of Commerce testified that rail passenger service was instrumental in the growth of Burlington and that the discontinuance of trains would seriously handicap the area.

11. A Burlington Executive testified as to the need for the trains by himself, his buyers, and his customers.

[fol. 858] 12. The Dean of Trinity College of Duke University, who made twenty to twenty-five trips a year himself, testified as to the need and convenience of the trains.

13. The Secretary of the Committee on Educational Institutions of the Duke Endowment testified that his work required use of these trains.

14. A Professor of Physics and a Member of the Advisory Committee of Reactor Safeguards, a part of the Atomic Energy Commission, testified that his work required the use of the trains at an average rate of a trip per month.

15. The President of Duke University testified to his use of the trains and that of his trustees and that their continuance was a matter of convenience and necessity.

Industries has assisted Southern in the removal of other schedules and originally did not protest the discontinuance involved here. Subsequent studies of the company needs caused Burlington to reverse its position. ICC Record, Vol. 111, pp. 374-6.

(He had made five trips to New York since the first of the year.)

16. The General Manager of the Jack Tar Hotel in Durham testified that the continued operations of the trains serve a necessary and convenient purpose for the guests who stay at his hotel and that the removal of the trains would not only be detrimental to efforts to attract conventions to Durham, but would inconvenience those persons attending such conventions.

17. The Director of Durham's Committee of 100 testified as to the need of the trains in locating and retaining industry in the Durham area.

[fol. 859] 18. The President of the Southerland Dye and Finishing Plant in Mebane, North Carolina, testified as to his use of the trains and their need in his area.

19. The Office Manager of the Belk Leggett Department Store in Durham testified as to his store's need of the trains for sending buyers to New York. The buyers consist of a group of four to six people going to New York once a month, ten months out of the year.

20. There was evidence of the need of the service in the industrial development of the area from Justin Kingston, a New York textile executive, now building a plant in Durham to employ two hundred to three hundred employees; from the Director of Transportation for Burlington Industries; from George Watts Hill, Chairman of the Board of the Home Security Life Insurance Company and of the Durham Bank and Trust Company, and numerous others. In addition, one witness, Dr. Thomas Powell, a man with an investment of a million dollars in the biological supply business in Elon, North Carolina, testified that the loss of rail passenger service might cause that business to leave North Carolina,

21. Evidence indicated that there are three universities in or near Durham (two in Durham, one in Chapel Hill in Orange County). A total of 14,737 students attended these institutions in 1958-9 and attendance is steadily increasing. [fol. 860] There are eight hospitals located in or near Durham. Six are within ten minutes by ambulance or auto from the Durham railroad passenger service. The other two, Butner and Memorial Hospital are within twenty to

twenty-four minutes. These hospitals treated a total of over 431,000 patients in 1959.

To summarize, in addition to the need for the services by the general public, the testimony indicated the need existed as to four principal areas: industry, hospitals, Duke University, and the U. S. Army.

The record indicates that the trains serve a growing area. The Durham-Burlington area is already heavily industrialized, with Burlington Mills and Western Electric predominating in Burlington, and the cigarette industry in Durham. In addition, in the opinion of Southern's General Industrial Agent "this area holds great promise in the field of industrial development . . . the new Research Triangle will give tremendous impetus to this growth and create ever-increasing industrial interest in this section." (Southern's freight traffic on the Greensboro-Goldsboro line may be expected to benefit accordingly.)

That this is a growing area would be meaningless if the growth was not reflected in increasing use of the trains. Southern points to a very large decline in passengers from [fol. 861] the year 1948 (an average of 77.51 per trip) to 1960 (an average of 20.2 per trip). This decline would seem to reflect the general revolution in transportation caused by the shift in travel from railways to air, bus, and private car. This decline appears to have bottomed out, however, and recent figures indicate that the use of the trains is increasing with the growth of the area:

	PASSENGERS ¹⁰		
	1959	1960	1961 (5 months)
Total	14,251	14,776	8,934
Daily Average	19.5	20.2	29.6
Average Passenger mile per train mile ¹¹	6.83	7.33	9.97

¹⁰ These figures do not include any pass riders, which were estimated at the hearing before the State-Utilities Commission at 8% of the total passengers.

¹¹ The evidence does not disclose the average number of passengers per train mile on the 55 mile portion of the line between Greensboro and Durham, although the principal public convenience presently afforded by trains Nos. 13 and 16 related to travel between these two cities. The line between Greensboro and Goldsboro is 129 miles long.

We note that the statute refers to "the present or future public convenience and necessity."

The increase in use may not be substantial (although it represents an increase of nearly 60% in the daily average number of passengers patronizing these trains in the first five months of 1961 as compared with the entire year of 1959), but must be viewed in the light of Southern's failure to seek passengers. Plaintiffs accuse Southern of [fol. 862] making a deliberate effort to discourage passenger service on the trains. Be that as it may, there is considerable evidence that Southern has done little, if anything, to promote greater use of these trains. The last advertising for the service before the commencement of these hearings occurred in 1951;¹² the president of the Research Triangle Institute testified that his associates did not know of the service until he told them. In contrast, there was testimony that Seaboard, with reference to its Raleigh service, actively advertised and solicited patronage and operated a well-staffed passenger office.

The ICC emphasized the availability of other means of travel to serve this area. There is good bus and air service, and the number of private automobiles is larger than the state-wide average. The fact of other methods of travel is a factor to be considered but it is not decisive. The statute speaks of convenience as well as of necessity. Also, the existence of *alternative* modes of travel in a heavily populated area should be considered a "convenience", and under some circumstances (such as air line strikes and bad weather) a "necessity."

What are the burdens imposed on interstate commerce by the operation of the trains?

[fol. 863] The ICC found that the carrier's annual out-of-pocket savings resulting from the discontinuance of the two trains would exceed \$90,000 each year.¹³ On this same

¹² Six advertisements appeared in the Durham paper in 1960. ICC Record, Vol. 111, pp. 308, 335. The hearing before the North Carolina Public Utilities was on Oct. 6, 1959, and the decision was handed down on January 20, 1960.

¹³ Plaintiffs contended that the maximum out-of-pocket loss was only \$33,688 in 1960, while Southern contended it would exceed \$117,640. The difference is largely accounted for by plaintiffs giving effect to the 58 per cent state and federal income tax de-

line of track the railroad made a net freight operating profit of \$630,000 in 1960.

Taking into account total operation of this line, there is a profit not a loss, a benefit, not a burden. The relative amount of profit on one service and loss on the other is a factor.

When we turn from this particular line to the over-all operations of Southern Railway, we find that the over-all profit of Southern Railway in 1960 for its entire system was \$30,702,542 after the payment of all taxes and all operating expenses. The figure for 1958 was \$30,254,231 and for 1959 was \$33,126,744.¹⁴ The accumulated surplus [fol. 864] of Southern in 1960 was \$343,594,070. The effect of the losses of the Greensboro-Goldsboro passenger service on the financial structure of the railroad is inconsequential.¹⁵ The degree by which the loss impairs the ability of the carrier properly to serve interstate commerce is not substantial.

But it is unfair to compare the loss from a particular segment of a passenger rail line to the total profit of the company. Nor is this the test. The question is whether the particular segment of the railway involved is contributing its fair share to the over-all company operations, or whether its share constitutes a burden on the company and on interstate commerce. The evidence in the record is not clear or full on the question of whether this segment

duction resulting from the deficit operation, on the ground that this is a cost borne by the state and national governments and thus would not affect the financial condition of the railroad itself and therefore could not affect interstate commerce by weakening the railroad's capital structure. But uneconomical transportation is not rendered less so by passing a portion of the burden to Federal and State governments in the form of reduced income taxes . . . "an uneconomic outlay of funds would not be in the interest of transportation even though the money be derived from the national government." *Purcell v. United States*, 315 U.S. 381, 385 (1942). As far as the effect of the deficit operation on the shareholders and the financial structure of Southern is concerned, however, the argument carries weight.

¹⁴ ICC Record, Vol. 11, p. 202.

¹⁵ As to its effect on shareholders, the loss in 1960 reduced net profits by .0016%, (after giving effect to state and federal income tax deductions).

of the line is contributing its fair share to the over-all company operations, but the evidence points in the direction that the Greensboro-Goldsboro line contributes at least its fair share. For example, Southern's over-all passenger deficit in 1960 was \$14,669,798 on its 2,913 passenger miles. The average loss per mile is then \$5,035 on a system-wide basis. If we assume Southern's net operating passenger deficit on the Greensboro-Goldsboro line was \$117,641 for 1960 (on a line of 130 miles); then the average loss per mile was \$912.¹⁶ The evidence further indicates that the [fol. 865] average revenue per passenger mile in 1960 was .0305 for trains Nos. 13 and 16, as compared with a company wide average of .0296 and a North Carolina average of .0301, indicating a greater revenue per passenger mile on the Greensboro-Goldsboro line than on the Southern's operations as a whole.¹⁷

We find no comparative figures relating to freight profits in the record. The amount of the freight profits on the Greensboro-Goldsboro line was apparently arrived at by taking 61% of the Southern Railway's average freight profits per mile multiplied by the total Greensboro-Goldsboro mileage.

The burdens of a public utility must be viewed in light of the principle that a public utility cannot shut off all unprofitable service—it must continue to serve, even at a loss as to some operations when the public convenience and necessity do not permit the loss of the service. Mr. Justice Frankfurter, in *Ala. Public Serv. Com. v. Southern Ry. Co.*, 341 U.S. 341, 71 S. Ct. 762, 95 L. Ed. 1002 puts it:

"Unlike a department store or grocery store, a railroad cannot of its own free will discontinue a particular service to the public because an item of its business has

¹⁶ This figure is only approximate. Mr. Gleason testified that the \$14,669,798 included all losses while the \$117,641 was only the out of pocket losses resulting solely from the trains' operations. ICC Record, Vol. 11, pp. 209-211.

¹⁷ For the first five months of 1961, the Greensboro-Goldsboro figures had fallen to .0274 compared to a company average of .0300. We find no figures for other years. ICC Record, Vol. 11, pp. 164-5.

become unprofitable One of the duties of a railroad doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and [fol. 866] enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided because it will be attended by some pecuniary loss."

Upon our examination of the entire record, in the light of the applicable principles of law, we fail to find substantial evidential facts to support the Commission's holding that the service in question constitutes an undue burden on the interstate aspects of the carrier's operations. The basic facts are not in conflict—nor is there any real conflict in the evidence offered by the parties. The question is whether there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229; 59 S. Ct. 205, 217, 83 L. Ed. 126 (1933); *Davis, Administrative Law Treatise*, Vol. 4, p. 186. We think there is not.

This court is specifically authorized by the Administrative Procedure Act (5 U.S.C.A. 1009) to "hold unlawful and set aside agency action findings and conclusions found to be arbitrary, capricious . . . or otherwise not in accordance with law . . . (or) unsupported by substantial evidence." By the provisions of Title 28, sec. 1336, jurisdiction is accorded to "set aside (or) annul any order of the Interstate Commerce Commission."

Pursuant to this authority, we hold unlawful and set aside the action of the Interstate Commerce Commission authorizing the carrier to abandon its passenger service. [fol. 867] We also hold unlawful and set aside the ultimate conclusions of the Interstate Commerce Commission that the service in question constitutes an undue burden on interstate commerce and that the present or future public convenience and necessity permits such discontinuance. We hold that such action and conclusions are arbitrary

and capricious because not in accordance with law and because not supported by substantial evidence.

We do not invalidate and do not set aside any of the subsidiary findings of fact made by the agency. Since we accord to them administrative finality, and since the record is complete bearing upon all aspects of the controversy, there would appear to be no occasion for remand. The procedure of remanding to an administrative agency is to afford the agency an opportunity to meet objections to its order by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings, or supplying findings validly made to take the place of those invalidated.¹⁹ None of these purposes would be served by remanding this case to the Interstate Commerce Commission for the simple reason that we have noted no irregularities in procedure and no important deficiencies in the record, and for the additional reason that we have invalidated [fol. 868] dated no subsidiary findings of fact but only ultimate conclusions of law and agency action.

Judgment For Plaintiffs

J. Spencer Bell, U. S. Circuit Judge.

J. B. Craven, Jr., U. S. District Judge, L. Richardson Preyer, U. S. District Judge.

October 19th, 1962.

¹⁹ 2 Am. Jur. 2d, "Administrative Law" sec. 764.

[fol. 869]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
C-158-D-62

STATE OF NORTH CAROLINA, et al.,

v.

SOUTHERN RAILWAY COMPANY, et al.

DECREE—October 19, 1962

The above entitled cause coming on to be heard on the 13th day of September, 1962, and all parties thereto having appeared by counsel, and the court having heard the arguments of counsel and having reviewed the record, and upon due consideration thereof it appearing to the court that the plaintiffs should be granted the relief prayed for in their complaint, it is therefore, on this the 19th day of October, 1962,

Ordered, Adjudged and Decreed that the Order of the Interstate Commerce Commission be set aside and that the defendant, Southern Railway Company, its officers, agents and employees, be permanently and perpetually enjoined and restrained from discontinuing passenger trains, Nos. 13 and 16, between Greensboro and Goldsboro, North Carolina.

The defendant, Southern Railway Company has until 12:00 noon, 24th day of October, 1962, in which to comply with this order.

[fol. 870] It is further Ordered, Adjudged and Decreed that the defendant, Southern Railway Company, pay the

costs of these proceedings to be taxed by the Clerk of this Court.

J. Spencer Bell, U. S. Circuit Judge.

J. B. Craven, Jr., U. S. District Judge; L. Richardson Preyer, U. S. District Judge.

October 19, 1962.

[fol. 871]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

[Title omitted]

NOTICE OF APPEAL BY SOUTHERN RAILWAY COMPANY TO THE
SUPREME COURT OF THE UNITED STATES—Filed December
14, 1962

I

Notice is hereby given that Southern Railway Company, a defendant in the above entitled action, hereby appeals to the Supreme Court of the United States from the Final Judgment holding unlawful and setting aside the action of the Interstate Commerce Commission, taken pursuant to the authority of 49 U.S.C., Section 13(a)(2), granting to defendant permission to discontinue its passenger trains Nos. 13 and 16 running between Greensboro, North Carolina, and Goldsboro, North Carolina, and permanently and perpetually enjoining and restraining Southern Railway Company, its officials, agents and employees, from discontinuing said passenger trains. ③

[fol. 872] This appeal is taken pursuant to 28 U.S.C., Section 1253 and Section 2101(b).

II

The Clerk will please prepare a transcript of the Record in this cause for transmission to the Clerk of the Supreme

Court of the United States and include in such transcript the following:

- (1) Order of the Three Judge District Court dated October, 19, 1962;
- (2) Opinion of the Three Judge District Court dated October 19, 1962;
- (3) Complaint (as amended) in the United States District Court of State of North Carolina; Duke University; The Durham Chamber of Commerce, Incorporated; Research Triangle Institute; Erwin Mills, Inc.; and Mary Trent Semans;
- (4) Answer in the United States District Court of the Southern Railway Company;
- (5) Answer in the United States District Court of the Interstate Commerce Commission and the United States of America;
- (6) Volume Numbers 1, 2, 3 and 4 of stenographer's minutes before the Interstate Commerce Commission in Finance Docket No. 21563 (consisting of 597 pages);

[fol. 873]

- (7) Petition of the Southern Railway Company before the Interstate Commerce Commission, including Exhibits 1 through 31, dated April 6, 1961;
- (8) Exhibits H-1 through H-25 before the Interstate Commerce Commission in Finance Docket No. 21563;
- (9) Order of the Interstate Commerce Commission dated August 8, 1962, finding no issue of general transportation importance;
- (10) Report of the Interstate Commerce Commission, Division 3, in Finance Docket No. 21563, decided June 27, 1962, service date July 2, 1962, together with Order of the Interstate Commerce Commission, Division 3, granting the Petition of the Southern Railway Company to discontinue the operation of the passenger trains;

(11) Report and Order recommended by William J. Gibbons, Hearing Examiner, in Interstate Commerce Commission Finance Docket No. 21563, served on October 27, 1961;

(12) Letter of July 31, 1961, from the Attorney General of North Carolina, correcting Volumes 1 and 2 of the stenographer's notes before the Interstate Commerce Commission;

[fol. 874]

(13) Letter of August 9, 1961, from the Attorney General of North Carolina, correcting Volumes 3 and 4 of the stenographer's notes before the Interstate Commerce Commission;

(14) Transcript of the testimony before the North Carolina Utilities Commission in Docket No. R-29, Sub 111, consisting of 621 pages;

(15) Bound record in the Supreme Court of North Carolina in Case No. 457, Fall Term 1960 (Grey back volume consisting of 384 pages);

(16) Exhibits 1 through 28 before the North Carolina Utilities Commission in Docket No. R-29, Sub 111;

(17) Exhibits A through H and A-1 through G-1 before the North Carolina Utilities Commission in Docket No. R-29, Sub 111;

(18) This Notice of Appeal.

III

The following questions are presented by this appeal:

(1) Where the District Court accepted, as valid and as properly supported, the Interstate Commerce Commission's findings of fact as to the economic burden of two intrastate passenger train operations sought to be discontinued, was it error for the District Court to reverse the ultimate conclusion of the Commission that the continued operation of the trains will constitute an unjust and undue burden upon interstate commerce on the ground that such ultimate con-

[fol. 875] elusion of fact was arbitrary, capricious and not supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"?

(2) Where the District Court stated that it had accepted, as valid and as properly supported, all of the subsidiary findings of fact of the Commission, was it error for the District Court to reverse the ultimate conclusion of the Commission that the present and future public convenience and necessity permit the discontinuance of the passenger trains on the ground that such ultimate conclusion of fact by the Commission was arbitrary, capricious and not supported by evidence?

(3) In arriving at its conclusion that the evidence was insufficient to justify the Commission's finding that public convenience and necessity does not require continuance of the service, did the District Court err in weighing the evidence in substituting its judgment for that of the Commission as to the weight and significance to be given the evidentiary facts and in making its own findings as to the need for the service?

(4) Did the District Court err in substituting its opinion for that of the Commission as to the result of the weighing of the economic waste and the consequent damage to the Railroad and to the national transportation system from the enforced continuance of operations against the disappearing use of the passenger service in question?

(5) Did the District Court err in construing Section 13(a)(2), Title 49 U.S.C., to require that the Interstate [fol. 876] Commerce Commission must, as a matter of law, determine and consider the profit, if any, made by the Railroad from overall operations on the segment of line between Greensboro and Goldsboro, North Carolina, from which the deficit passenger trains 13 and 16 were to be discontinued, and err in holding that the Commission had not given adequate consideration to the question of such profit?

(6) Was it error for the District Court to attempt to consider or to reach any conclusion of its own as to the

possible profits earned from the Railroad's total operations over the 129 mile line in question by looking at figures as to the average per mile earnings over the Railroad's 6,000 mile interstate system, and in the absence of any competent evidence of the overall earnings on the segment in question?

(7) If the District Court did not err in its conclusion that Section 13(a)(2), Title 49 U.S.C., requires in this case consideration of the freight profit from the operation of the segment over which the passenger trains in question operate, did the District Court err in finding that the record is "complete bearing upon all aspects of the controversy", and did the District Court err in reversing the Order of the Commission instead of remanding the matter for the purpose of taking additional evidence, if necessary, and of considering operating profits and making agency findings thereon?

[fol. 877] (8) Did the District Court err in permanently and perpetually enjoining and restraining the Southern Railway, its officers, agents and employees from discontinuing the passenger trains in question?

This 13th day of December, 1962.

W. T. Joyner, P. O. Box 109, Raleigh, North Carolina.

W. T. Joyner, Jr., P. O. Box 109, Raleigh, North Carolina.

Earl E. Eisenhart, Jr., Of Counsel, P. O. Box 1808, Washington, D. C.

[fol. 878]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

[Title omitted]

NOTICE OF APPEAL BY UNITED STATES TO THE SUPREME COURT
OF THE UNITED STATES—Filed December 17, 1962

I.

Notice is hereby given that the United States of America, a defendant in the above-entitled civil action, hereby appeals to the Supreme Court of the United States from the final judgment and decree entered in this action on October 19, 1962.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101(b).

II.

The Clerk of the District Court will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1) Complaint filed August 18, 1962, and amendments to complaint by the State of North Carolina et al., plaintiffs, including the exhibits attached thereto;

(2) Answer of the defendant Southern Railway Company including the exhibits attached thereto;

(3) Answer of the United States of America and the Interstate Commerce Commission;

[fol. 879] (4) Designation of three-judge court dated August 24, 1962;

(5) Opinion of the Court dated October 19, 1962;

(6) Judgment order of the Court dated October 19, 1962;

(7) This notice of appeal.

III.

The following questions are presented by this appeal:

(1) Whether the District Court misinterpreted section 13a(2) of the Interstate Commerce Act in determining that public convenience and necessity did not permit the discontinuance of Southern Railway's passenger trains operating between Greensboro and Goldsboro, North Carolina, and that the losses from that passenger service did not constitute an unjust and undue burden upon the interstate operations of such carrier or upon interstate commerce.

(2) Whether the District Court erred in holding that "If losses in an intrastate operation are so exceeded by profits of intrastate operation of the same general type, in the same state, so as to pay operating expenses and yield a high profit, the net effect on interstate operations is not a burden on interstate commerce."

(3) Whether the District Court erred in not remanding the proceeding to the Commission to make additional findings in light of the court's interpretation of the statute.

(4) Whether the District Court erred in holding that the evidence in the record failed to support the conclusion that public convenience and necessity permit the discontinuance of the passenger train service and that the continued operation of such passenger service will constitute an unjust and undue burden upon the interstate operations of such carrier or upon interstate commerce.

(5) Whether the District Court erred in reappraising and weighing the evidence and in substituting its judgment for the Commission's judgment, although accepting all of [fol. 880] the Commission's subsidiary findings of fact, in finding that public convenience and necessity did not permit the discontinuance of the passenger trains, and that losses from the operation of those trains will not constitute an unjust and undue burden upon the interstate operations of such carrier or upon interstate commerce.

John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.

Lee Loevinger, Assistant Attorney General.

William H. Murdock, United States Attorney,
Greensboro, North Carolina.

Attorneys for United States of America

[fol. 881]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

[Title omitted]

Civil Action No. C-158-D-62

NOTICE OF APPEAL BY THE INTERSTATE COMMERCE COMMISSION TO THE SUPREME COURT OF THE UNITED STATES—
Filed December 17, 1962

I.

Notice is hereby given that the Interstate Commerce Commission, defendant in the above-styled civil action hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on October 19, 1962.

This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

II.

The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the record made before the Commission filed with the district court, and the following:

(a) Complaint filed August 18, 1962, and amendments to complaint by the State of North Carolina, et al., plaintiffs, including the exhibits attached thereto;

[fol. 882] (b) Answer of the defendant Southern Railway Company including the exhibits attached thereto;

(c) Answer of the United States of America and the Interstate Commerce Commission;

(d) Designation of three-judge court dated August 24, 1962;

(e) Opinion of the Court dated October 19, 1962;

(f) Judgment order of the Court dated October 19, 1962;

(g) This notice of appeal.

III.

The following questions are presented by this appeal:

(1) Whether the district court erred in holding that the Commission is required to take into account the net earnings from all freight operations by a railroad over a particular line of railroad in determining whether the continuance of intrastate passenger train service over that line constitutes an unjust and undue burden on the interstate operations of the railroad and upon interstate commerce.

(2) Whether the district court erred in substituting its judgment for that of the Commission, and in making independent findings that continued operation of the trains is required by public convenience and necessity and will not constitute an unjust and undue burden.

(3) Whether the district court erred in holding that the Commission's findings that the present and future public convenience and necessity permit the discontinuance of the passenger train service and that the continued operation of the passenger trains would constitute an unjust and undue burden upon the interstate operations of the rail carrier and upon interstate commerce, were not supported by substantial evidence.

[fol. 883] (4) Whether the district court erred in failing to give the Commission an opportunity on remand to make appropriate findings of fact and conclusions of law.

Robert W. Ginnane, General Counsel.

H. Neil Garson, Associate General Counsel.

Attorneys for Interstate Commerce Commission.

[fol. 883a] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 884]

SUPREME COURT OF THE UNITED STATES

Nos. 823 and 943, October Term, 1962

SOUTHERN RAILWAY COMPANY, Appellant,

vs.

NORTH CAROLINA, et al.; and

UNITED STATES, et al., Appellants,

vs.

NORTH CAROLINA, et al.

Appeals from the United States District Court for the
Middle District of North Carolina.

ORDER NOTING PROBABLE JURISDICTION—May 13, 1963

The statements of jurisdiction in these cases having been
submitted and considered by the Court, probable jurisdic-
tion is noted. The cases are consolidated and a total of
two hours is allotted for oral argument.

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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962 **3**

No. ~~1003~~ **74**

SOUTHERN RAILWAY COMPANY, Appellant

v.

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE
DURHAM CHAMBER OF COMMERCE, INC.; RESEARCH
TRIANGLE INSTITUTE; ERWIN MILLS, INC.; and
MARY TRENT SEMANS, Appellees**

**On Appeal from the United States District Court for the Middle
District of North Carolina—Durham Division**

JURISDICTIONAL STATEMENT

**WILLIAM T. JOYNER
P. O. Box 109
Raleigh, N. C.**

**EARL E. EISENHART, JR.
Southern Railway Company
P. O. Box 1808
Washington 13, D. C.**

Counsel for Appellant

February 12, 1963.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1962

No.

SOUTHERN RAILWAY COMPANY, Appellant

v.

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE
DURHAM CHAMBER OF COMMERCE, INC.; RESEARCH
TRIANGLE INSTITUTE; ERWIN MILLS, INC.; and
MARY TRENT SEMANS, Appellees**

**On Appeal from the United States District Court for the Middle
District of North Carolina—Durham Division**

JURISDICTIONAL STATEMENT

Southern Railway Company (defendant below) appeals from the judgment of the United States District Court for the Middle District of North Carolina, entered on October 19, 1962, setting aside an order of the Interstate Commerce Commission, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the District Court for the Middle District of North Carolina, Durham Division, is reported in 210 F. Supp. 675, and is attached hereto as Appendix A. The report and order of the Interstate Commerce Commission in Finance Docket 21563, dated June 27, 1962, authorizing the Southern Railway to discontinue the operation of two intrastate passenger trains is not yet reported and is attached hereto as Appendix B. The recommended report and order of the hearing examiner of the Interstate Commerce Commission, with certain exhibits attached thereto, which was referred to and adopted by the Interstate Commerce Commission as a part of its report is attached hereto as Appendix C.

JURISDICTION

This suit was brought by appellees under 28 U.S.C. §§ 1336, 1398 and 2321-2325 to set aside an order of the Interstate Commerce Commission. Trial was held before a three-judge court convened under 28 U.S.C. § 2284. The judgment of the District Court setting aside the Commission's order and permanently enjoining appellant from acting thereunder was entered on October 19, 1962, and notice of appeal was filed in that court on December 14, 1962.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *United States v. Capital Transit Company*, 325 U.S. 357 (1945); *Chicago, M., St. P. & P. R. Co. v. Illinois*, 355 U.S. 300 (1958); *New York, Susquehanna & Western R.R. Co.*

v. United States, 200 F. Supp. 860 (D. N.J., 1961), probable jurisdiction noted *New Jersey v. New York, Susquehanna & Western R.R. Co.*, 370 U.S. 933 (1962).

THE STATUTE INVOLVED

Section 13a(2) of the Interstate Commerce Act, as amended, 72 Statutes at Large 568, 572 (49 U.S.C. § 13a(2)) empowering the Interstate Commerce Commission to authorize the discontinuance of intrastate passenger trains is set forth in Appendix D hereto.

QUESTIONS PRESENTED

The following questions are presented in the appeal:

(1) Where the District Court accepted, as valid and as properly supported, the Interstate Commerce Commission's findings of fact as to the economic burden of two intrastate passenger train operations sought to be discontinued, was it error for the District Court to reverse the ultimate conclusion of the Commission that the continued operation of the trains will constitute an unjust and undue burden upon interstate commerce on the ground that such ultimate conclusion of fact was arbitrary, capricious and not supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"?

(2) Where the District Court stated that it had accepted, as valid and as properly supported, all of the subsidiary findings of fact of the Commission, was it error for the District Court to reverse the ultimate conclusion of the Commission that the present and future public convenience and necessity permit the discontinuance of the passenger trains on the ground that such ultimate conclusion of fact by the Commission

was arbitrary, capricious and not supported by evidence?

(3) In arriving at its conclusion that the evidence was insufficient to justify the Commission's finding that public convenience and necessity does not require continuance of the service, did the District Court err in weighing the evidence, in substituting its judgment for that of the Commission as to the weight and significance to be given the evidentiary facts and in making its own findings as to the need for the service?

(4) Did the District Court err in substituting its opinion for that of the Commission as to the result of the weighing of the economic waste and the consequent damage to the railroad and to the national transportation system from the enforced continuance of operations against the disappearing use of the passenger service in question?

(5) Did the District Court err in construing Section 13a (2), Title 49 U.S.C., to require that the Interstate Commerce Commission must, as a matter of law, determine and consider the profit, if any, made by the railroad from overall operations on the segment of line between Greensboro and Goldsboro, North Carolina, from which the deficit passenger trains 13 and 16 were to be discontinued; and err in holding that the Commission had not given adequate consideration to the question of such profit?

(6) Was it error for the District Court to attempt to consider or to reach any conclusion of its own as to the possible profits earned from the railroad's total operations over the 129 mile line in question by looking at figures as to the average per mile earnings over the

railroad's 6,000 mile interstate system, and in the absence of any competent evidence of the overall earnings on the segment in question?

(7) If the District Court did not err in its conclusion that Section 13a (2), Title 49 U.S.C., requires in this case consideration of the freight profit from the operation of the segment over which the passenger trains in question operate, did the District Court err in finding that the record is "complete bearing upon all aspects of the controversy", and did the District Court err in reversing the order of the Commission instead of remanding the matter for the purpose of taking additional evidence, if necessary, and of considering operating profits and making agency findings thereon?

(8) Did the District Court err in permanently and perpetually enjoining and restraining the Southern Railway, its officers, agents and employees from discontinuing the passenger trains in question?

STATEMENT OF THE CASE

Appellant Southern Railway Company, having been denied permission by the State authorities to discontinue a pair of intrastate passenger trains operating between Greensboro and Goldsboro, N. C., petitioned the Interstate Commerce Commission for such authority pursuant to Section 13a(2) of the Interstate Commerce Act. Following submission by the carrier of certain evidence required by the Commission's rules and a public hearing lasting several days, the Commission's hearing examiner filed a recommended report and order in which he concluded, upon the evidence analyzed in his report and applied to the Commission's previous interpretations of Section 13a(2), that the

railroad's petition should be granted. His report was adopted by the Commission through its Division 3 which found that "the present and future public convenience and necessity permit the discontinuance of service by the Southern Railway Company of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C., and that the continued operation thereof would constitute an unjust and undue burden upon the interstate operations of that carrier and upon interstate commerce."

Reconsideration by the Commission having been denied, certain of the protestants initiated this suit in the United States District Court for the Middle District of North Carolina which held unlawful and set aside the order of the Commission and permanently and perpetually enjoined appellant from discontinuing the trains. The court's decision was based on two grounds:

- 1—That the Commission's order is unwarranted in law in that Section 13a(2) does not authorize the Commission to find that the continued operation of the trains will constitute an unjust and undue burden upon interstate operation of the petitioning carrier or upon interstate commerce unless there is evidence of the financial results of over-all operations on the segment of line from which the passenger trains are to be discontinued, and
- 2—That the Commission's holdings were not supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that the service in question constitutes an undue burden on the interstate aspects of the carrier's operations, or that the present or

future public convenience and necessity permit such discontinuance.

In its first ground for decision the District Court has in effect amended Section 13a(2) to provide a rule for the determination of "unjust and undue burden" in train discontinuance cases which has no foundation in the language of the statute nor in its purpose.

The legislative history of Section 13a makes it clear that Congress recognized that railroad passenger trains no longer are used or needed to the same degree as formerly and that their continued operation, where they have been largely abandoned by the public, is an economic waste which should be eliminated in the interest of greater carrier efficiency and ability to meet competition in those aspects of service where railroads are needed.

Pertinent excerpts from the legislative history are set forth in Appendix E attached hereto, and we have further elaborated upon this point in the following part of this statement where we show this Court that the lower court's interpretation of Section 13a(2) raises a substantial question.

In connection with the second of those two grounds, it is important to note some of the facts.

The District Court did not challenge any finding of fact as to operations, patronage, money losses, manpower waste, other available means of transportation, lack of need for the trains, or demonstrated absence of desire by the public to use the trains.

The District Court differed only with the ultimate conclusions of the Commission, holding them capricious, unreasonable and unsupported.

Moreover, the District Court, in reaching its conclusion to enjoin permanently the discontinuance of the trains, must have reached an ultimate conclusion of its own that on the facts in the record, and as found by the Commission, and as accepted by the District Court, no reasonable commission or court could now, or ever in the future, reach a conclusion that the public convenience and necessity could permit the discontinuance of the trains. The District Court not only set aside the ultimate conclusion of the Commission but it also substituted a definite ultimate conclusion of its own as a basis for its permanent injunction.

In view of all of such acts by the District Court, it is proper and necessary to set forth some of the important facts. They will throw light on our later discussion of the substantial nature of the questions.

These are some important accepted facts about the operating burden of the trains—the burden on money and the burden on manpower:

1. The net savings to be realized by the discontinuance of the trains would be not less than \$90,000.00 a year.
2. For the most recent calendar year of operations covered by the record, the direct expenses of operating the trains were eight times the passenger revenues derived from such operations and were more than three times all revenues from operations.
3. For that year, the wages of the train and engine crews alone were more than four times the passenger revenues.
4. For that year, the average number of passengers per train mile was approximately seven, and the aver-

age number of trained and skilled men working on the trains per train mile was approximately seven.

These are some important accepted facts about the complete lack of need for the service and the almost complete lack of desire by the public to use the service:

1. The 129-mile branch line runs through a heavily populated section in the middle of the State of North Carolina. Excellent hard surface roads parallel its entire length.

2. No protest was made by persons living along or desiring to use the service on the eastern 74 miles of the 129 mile line, that is, east of Durham.

3. Virtually all of the complaints came from the city of Durham, or its immediate vicinity, 55 miles east of Greensboro, with a few from Burlington, 21 miles east of Greensboro.

4. All passenger complaints related to interstate trips extending beyond the line in question and were made by persons who in various degrees of frequency desired the personal convenience of a through car handled on the trains in question in connection with other trains of appellant at Greensboro, N. C., and trains of another railroad at Washington, D. C., to and from eastern cities, principally New York.

5. Adequate public service transportation is available by bus. The paralleling bus service consists of fifteen buses each way each day over the western 81 mile portion of the line, that is, between Greensboro and Raleigh, and eight buses each way each day over the eastern 48 mile portion of the line, that is, between Raleigh and Goldsboro. So, there was an average of $12\frac{1}{2}$ bus trips over every mile for every train trip.

6. The same desired connection with Southern at Greensboro and numerous additional train connections there can be made by 55 miles of travel over paved roads by private automobile or by any one of the fifteen daily buses running each way. Any one of the three train connections north or south could be made with Seaboard Railway at Raleigh by 26 miles of travel over paved roads by private automobile or by using one of the fifteen daily buses each way.

7. Here the fact is again important that each train carried for the last full year of statistics, an average of seven passengers per mile.

8. Adequate public carrier transportation service is available by air, to and from the Raleigh-Durham Airport, approximately 14 miles from Raleigh and 13 miles from Durham, where there are numerous flights daily in all directions, the greater number being to eastern cities, eight to New York and nine to Washington.

Construing the statement of action made by the District Court in the light of prior portions of its opinion, it appears that the court did two things:

1. It held that the Commission erred in failing to require evidence of and in failing to give consideration to the question of profits on the 129-mile branch line over which the two trains were operated. This failure the court seemed to hold prevented the proper balancing of burden against need.
2. It held that the Commission was arbitrary and capricious in its conclusion that the public need was negligible and the public convenience inconsequential. In fact it appears that the District Court

held that the only conclusion that the Commission could reach on the record was that the public need was so great that it would outweigh the money losses and man-power waste, irrespective of the existence or the size of profits on the 129-mile line or profits on the complete intrastate operations.

We submit that the District Court erred in both matters; that the court invaded improperly the province of the Interstate Commerce Commission set apart by Congress; and that it substituted its judgment for that of the Commission in both matters.

THE QUESTIONS ARE SUBSTANTIAL

Substantial questions of general importance are raised by the District Court's holdings,

- 1—interpreting Section 13a(2) to require that the Commission give effect to overall revenues derived from a segment of line before it can find that a deficit passenger train constitutes an undue burden permitting its discontinuance, and
- 2—finding that in the absence of evidence as to profits, if any, from such segment there is not sufficient evidence to support the Commission's ultimate conclusion that public convenience and necessity permits the discontinuance and that the continued operations thereof would be an unjust and undue burden upon the interstate operations of the carrier or upon interstate commerce.

The questions involve the construction and application of a new and a very important statute enacted August 12, 1958, as a part of the Transportation Act of

1958. The part of the statute here involved, 49 U.S.C. § 13a(2), commits to the Interstate Commerce Commission an entirely new field of authority and action, the discontinuance of unprofitable and uneconomic intrastate passenger trains.

Congress was dealing not with a new but with a rapidly worsening situation—the threat posed to the national transportation system because of the competitive and economic burdens on the railroads.

The Reports of the Senate and House Committees, which considered the legislation, show that Section 13a(2) was striking at economic waste, that the Congressional purpose was to permit discontinuance of the operation of services that “no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved.” (S. Report No. 1647, 85th Congress, 2nd Session, 1958, pp. 21-22). It was thus the announced intent of Congress that where the loss from the train operation was substantial and the need was not substantial, the services should be discontinued, irrespective of profits on the line in question, intrastate profits in the State, or elsewhere.

There are at least three places where the Committees speak of discontinuance of unprofitable and unnecessary services without any reference to or suggestion of compensating profits anywhere.

In the same statute which contains Section 13a(2), Congress made provision for a loan guarantee fund to be made available out of public funds to approved railroads in an amount not to exceed five hundred million dollars for rail transportation relief (72 Statutes at Large 568, 569, 49 U.S.C. §§ 1231-1240). The Congress which was preparing to provide one half billion dollars

was also providing for the elimination of waste in rail services not needed, interstate or intrastate.

The interpretation of the Interstate Commerce Commission as the agency charged with the administration of the Act is of some significance in the ascertainment of the legislative intent. See *New York, New Haven & H. R. Co. v. Interstate Commerce Commission*, 200 U.S. 361, 402 (1906); *Boston & Maine R. R. Co. v. Hooker*, 233 U.S. 97, 118 (1914).

In *Southern Pacific Co. Partial Discontinuance*, 312 I.C.C. 631, 633 (1961) the Commission said:

"The burden [upon the carrier's interstate operations or upon interstate commerce, as expressed in Section 13a(2)] . . . is to be measured by the injurious effect that the continued operation of the train proposed for discontinuance would have upon interstate commerce. As is indicated by its legislative history, the purpose of section 13a(2) is to permit the discontinuance of the operation of services that 'no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses involved.' (S. Rep. 1647, 85th Cong.) Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

The Commission has constantly rejected contentions that an undue burden on interstate commerce from operation of a service can exist only where over-all operations are unprofitable or where petitioner is not

receiving a fair return over-all. *Great Northern Ry. Co.—Discontinuance of Service*, 307 I.C.C. 59, 69 (1959), a Section 13a(1) interstate train case; *New York Central R. Co. Abandonment*, 254 I.C.C. 745, 761 (1944), a Section 1(18) abandonment case.

In the instant case, where the facts accepted by the District Court showed that the loss of money from the operation of the trains was substantial, and the wasted manpower glaring, and where, as found by the Commission, the need was hardly perceptible, there was no necessity for the Interstate Commerce Commission to give effect to the amount of profit from the line or from intrastate business. The Commission satisfied its statutory requirement by finding that the operation of the trains amounted to an unjustified economic waste, considering losses from the operation weighed against the public need.

Section 13a(2) has not been construed by the Supreme Court of the United States. Whether that subsection, directed at intrastate train discontinuances, or subsection (1) of Section 13a, dealing with interstate trains, applied to a certain factual situation was argued before the Court this term in *New Jersey v. New York, Susquehanna & Western R.R. Co.*, No. 104, but as yet no decision has been announced.

There have been several cases in which orders of the Commission granting relief under Section 13a(2) have been before various district courts, in each of which the Commission's order has been sustained:

City of Philadelphia v. United States, 197 F. Supp. 832 (E.D. Pa., 1961);

State of Montana v. United States, 202 F. Supp. 660 (D. Mont., 1962);

People of the State of California v. United States,
207 F. Supp. 635 (N.D. Calif., 1962).

In the last case where questions very similar to those in the instant case were raised, the three judge court, in a *per curiam* decision, upheld the Commission's order authorizing the discontinuance of an intrastate train. The court said in final part: "The compass of our review is narrow. If the Commission's order is justified and supported by the Findings contained in the Commission's report, the Commission's order must stand. We so conclude.

We find this cause to be without merit.

It is dismissed."

One of the questions disposed of by the court's order was that of overall profits which the Commission had decided as follows:

"In reaching our conclusions herein, we have given full consideration to protestants' contention that petitioner's system operations as a whole must be unprofitable, or that it is failing to receive a fair return on a system-wide basis considering both freight and passenger traffic before it can be found that an undue burden on interstate commerce exists. We reject such contention . . . [citing precedents]." *Southern Pacific Company Partial Discontinuance of Passenger Trains Between Los Angeles and Sacramento etc.*, Finance Docket No. 20503 decided July 21, 1960, mimeographed sheet 34, (not printed in full in I.C.C. reports)

It is important to the railroad industry and the public that the Supreme Court construe and resolve differences in interpretation of the Commission's function under Section 13a(2).

Another question of substance is raised by the District Court's holding that the profits to be considered were the profits from both intra and interstate traffic on the branch line where the trains in question operated. It is noted that the District Court held that such profits amounted to \$630,000.00, arriving at that figure by taking a system per mile average, including intrastate and interstate business everywhere—a completely unreliable method, resulting in an unrealistic conclusion as the Commission in its expertise would have recognized.

We know of no case supporting the District Court's action of using segment profits to outweigh an intrastate burden. The court relied heavily on *Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. State of Illinois*, 355 U.S. 300, decided January 13, 1958, and *Public Service Commission of Utah v. United States of America*, 356 U.S. 421, decided May 19, 1958, to support its position on the weighing of profits. Those cases are not in point. They involved applications to increase intrastate rates because of their discriminatory nature, discrimination against interstate business. The Court held that the determination of whether there was *discrimination* depended in part upon a consideration of all intrastate business. In the instant case, the thrust of the statute is not against *discrimination*, but against waste which is *burdensome* to interstate commerce.

The District Court has obstructed the will of Congress and, in the initial stages of the interpretation of Section 13a, it has jeopardized an expert and uniform application of Section 13a(2) by the Commission.

It seems obvious that the lower court's holding that there is not "such relevant evidence as a reasonable mind might accept as adequate to support a conclu-

sion," as applied to the Commission's finding of undue burden on interstate commerce is simply another expression of the court's first finding that as a matter of law Section 13a(2) requires consideration of overall profits, and that it would be disposed of by this Court's interpretation of the meaning of Section 13a(2).

It is less obvious how the District Court could have arrived at the conclusion that the evidence and subsidiary findings did not support the Commission's ultimate finding that public convenience and necessity no longer requires the continued operation of the trains, without the court's weighing the evidence, balancing the loss against the need and substituting its own judgment for that of the Commission.

Apparently, the real reliance of the District Court, the real nub of its decision, was its determination that there existed such a tremendous and pressing need for the service that no reasonable person, Commission, or expert could possibly reach a conclusion that the need was slight and was outweighed by the loss. The law applicable to that issue seems to be well settled: If there is any reasonable ground for the conclusion of the administrative commission, the commission decision must be affirmed.

"The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Line v. United States*, 292 U.S. 282, 286-7 (1934).

"It [the court] cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and

the applicable law." (emphasis ours) *United States v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536 (1946).

"In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling." *Interstate Commerce Commission v. Union Pacific Railway*, 222 U.S. 541, 547 (1912).

In consideration of the need for or the convenience of the service, the District Court, unlike the Commission, gave little, if any, weight to the undisputed facts showing the decline in use made by the trains over a period of years despite the growth of the area, the present slight interest in the trains by a few persons using them as a convenience to make a through connection on some of their interstate journeys, the abundance of other common carrier service readily available to them for those trips on which they use the trains. Against the slight inconvenience to a few passengers, the Commission weighed the out-of-pocket loss from operations, not less than \$90,000.00 per year; the waste of manpower, nearly one railroad train and engine crewman per passenger; the fact that wages of engine and train crew were four times passenger revenues; and reached the conclusion that the public convenience and necessity permitted the discontinuance. That certainly was a conclusion which is within the bounds of reason.

Although reciting cases which have defined the scope of judicial review, the District Court abandoned the well settled principle of judicial restraint, by intruding

upon the Commission's function. Under the guise of determining the sufficiency of evidence, it substituted its judgment for that of the Commission as to matters within the latter's competence. The court weighed the evidence, omitted from its consideration some of that which was favorable to appellants, and substituted its judgment as to the weight to be given the evidence for that of the Commission.

The District Court thereupon sealed its substitution of its own opinion of the merits for that of the Commission by reversing the Commission's order and permanently and perpetually enjoining the discontinuance of the trains, instead of remanding the case for further action by the Commission pursuant to any rules of law laid down by the court.

The District Court's treatment of this case is so contrary to settled principles of judicial review of administrative orders that, if left standing, it would obfuscate the whole concept and severely handicap the Interstate Commerce Commission in the administration of the Interstate Commerce Act, particularly Section 13a; and it would deprive the railroad industry of any certainty as to its rights and duties under that section by permitting a lack of uniformity in the execution thereof, as demonstrated by different results obtained where Federal Courts have disposed of similar cases under Section 13a with proper observance of the settled principles of judicial review.

The setting aside of the Commission's order on the ground of insufficient evidence to support reasonable conclusions, viewed in the framework of the record in this case, constitutes, of itself, an obstruction to the enforcement of the statute and raises substantial ques-

tions for the determination of this Court as to by whom and what standards the issues of public convenience and necessity and undue burden on interstate commerce are to be decided in Section 13a cases.

CONCLUSION

The questions presented by this appeal are, for the reasons shown herein, substantial and of urgent importance to the public, the railroad industry generally and the regulatory authority. They are of national importance because of the principles involved and because of the effect of the decision of the court below on the administration of a new and important act of Congress.

It is respectfully submitted that probable jurisdiction should be noted.

WILLIAM T. JOYNER

P. O. Box 109

Raleigh, N. C.

EARL E. EISENHART, JR.

Southern Railway Company

P. O. Box 1808

Washington 13, D. C.

Counsel for Appellant

February 12, 1963.

APPENDIX A

The Opinion and Judgment of the Court Below

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

C-158-D-62

STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE DURHAM
CHAMBER OF COMMERCE, INCORPORATED; RESEARCH TRI-
ANGLE INSTITUTE; ERWIN MILLS, INC.; and MARY TRENT
SEMANS,

Plaintiffs,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE
COMMISSION; and SOUTHERN RAILWAY COMPANY,

Defendants.

Thomas Wade Bruton and Charles W. Barbee for State
of North Carolina; E. C. Bryson for Duke University; F.
Gordon Battle and Victor S. Bryant for Durham Chamber
of Commerce and Research Triangle; A. H. Graham, Jr.
for Erwin Mills; and E. C. Brooks, Jr. for Mary Trent
Semans.

H. Neil Garson and William H. Murdock, District Attor-
ney, for United States of America; H. Neil Garson for
Interstate Commerce Commission; and Joyner and Howi-
son, Major L. P. McLendon, James A. Bistline, and Earl
E. Eisenhart, Jr. for Southern Railway Company.

Before BELL, Circuit Judge, and CRAVEN and PREYER,
District Judges.

OPINION

L. RICHARDSON PREYER, District Judge.

This is an action brought under USC Title 28, Section
1336, in accordance with USC Title 28 Sections 1938,
2284 and 2321-2325. Its purpose is to set aside and
enjoin enforcement of an order of the ICC granting South-

ern Railway Co. the right to discontinue all remaining passenger service between Greensboro, N. C. and Goldsboro, N. C. Acting under U.S.C. Title 49 Section 13a(2)¹, the Commission found that (1) the present or future public convenience and necessity permit such discontinuance, and (2) continuance of the operation would constitute an unjust and undue burden on interstate operations of the carrier and upon interstate commerce.

On July 18, 1959, Southern Railway Company filed a petition with the North Carolina Utilities Commission for discontinuance of its trains Nos. 13 and 16 which are the last passenger trains operating between Goldsboro and Greensboro, North Carolina. Actually, only one train is involved, it being designated No. 16 in one direction and No. 13 on the return trip.

Train No. 16 leaves Greensboro daily at 6:10 a.m., makes twelve regular stops and arrives in Goldsboro at 10:45

¹ Section 13a(2) provides that:

Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single state is prohibited by the constitution or statutes of any state or where the state authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. (sic) When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the state in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall (sic) in which such train and ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records, and facilities of the authorities in such state in the performance of its functions under this paragraph. (See Appendix D for correct text of Section 13a(2).)

a.m. Its principal stops are Burlington, Durham, Raleigh, and Selma.

Train No. 13 leaves Goldsboro daily at 4:05 p.m. and arrives in Greensboro at 8:50 p.m. with similar stops along the route.

A sleeping car is attached to the train and by connection with other trains at Greensboro, there is service to and from Washington, New York, and other major centers along the Eastern Seaboard.

These trains carry express but no freight or mail. The coaches have a capacity of 80 passengers. In addition, there is a 6 bedroom, ten-roomette sleeping car. There are six employees paid by the railroad servicing the train.

After hearings, the State Commission denied the application. Southern appealed to the North Carolina Superior Court, which affirmed the decision, and then to the Supreme Court of North Carolina which also affirmed. *Utilities Comm. v. R.R.*, 254 NC 73, 118 S.E. 2d, 21 (1961).

On April 16, 1962, Southern filed a petition with the Interstate Commerce Commission under Section 13a(2) of the Interstate Commerce Act, again seeking authority to discontinue the trains. The State of North Carolina and the other protestants were allowed to intervene.

The entire records of the hearings before the North Carolina State Utilities Commission, the North Carolina Superior Court, and the North Carolina Supreme Court were made a part of the record for consideration by the Interstate Commerce Commission.

The proceedings were referred to an ICC Examiner who, after holding hearings, recommended that the discontinuance be allowed. On July 2, 1962, Division 3, of the ICC issued an Order adopting the findings and conclusions of the Examiner and authorizing the discontinuance of the trains. A petition for reconsideration was denied by the ICC. This action followed.

ISSUES DISMISSED

At the threshold of the case, plaintiffs raise certain legal questions which, if meritorious, would require dismissal of the ICC Order without reaching the substantive aspects of the case. Specifically, plaintiffs attack the constitutionality of section 13a(2); they claim a defect in the giving of notice of the discontinuance, as required by law; they contend that a lease from the North Carolina Railroad Corporation to the Southern Railway Company requires the continuance of these operations; and they claim that the decision of the North Carolina Supreme Court is res judicata on the issues, and that the ICC cannot make a contrary determination without a showing of changes in the surrounding circumstances that occurred after the North Carolina Supreme Court decision. We think all of these arguments are without merit.

Plaintiffs' attack on the constitutionality of section 13a(2) is without merit. The scope of the commerce power is such that there is little room for doubt of the constitutionality of an act allowing the ICC to eliminate intrastate operations that adversely affect interstate commerce. *Gibbons v. Ogden*, 9 Wheat. (22 U.S.) 16 L. Ed. 23 (1824); *Wickard v. Filburn*, 317 U.S. 111 (118), 63 S. Ct. 82, 87 L. Ed. 122 (1942); *Wisc. R.R. Com. v. Chicago, Burlington and Quincy R.R. Co.*, 257 U.S. 563, 42 S. Ct. 232, 66 L. Ed. 371 (1922); (589-590., *Colorado v. U.S.* 271 U.S. 153 (163, 165-166), 46 S. Ct. 452, 70 L. Ed. 878 (1926)). We find section 13a(2) constitutional.

As to plaintiffs' claim of a defect in notice, it is clear that the claim is based on an oversight by the ICC in failing to change a reference in 49 CFR 43.6 when 49 CFR 43.5 was amended and renumbered. Section 13a(2) merely requires that the ICC notify the Governor of the state in which the train is operating. No further notice is required under section 13a(2) or under the commission regulations. We find that all requirements pertaining to notice have been met.

Plaintiffs further allege that the discontinuance of the trains in question would constitute a breach of the Lease Agreement between the Southern Railway Company and the North Carolina Railroad Company, dated August 16, 1895, and, consequently, that it is unlawful for the ICC to authorize such discontinuance. But no obligation to require the Southern to operate passenger trains over the lines leased from the North Carolina Railroad can be unambiguously spelled out of the lease. Furthermore, this issue was not raised before the ICC, and it should not be raised here for the first time. *Carolina Scenic Coach Lines v. United States*, et al, 56 Fed. Supp. 801 (803-804) (W.D. N.C. 1944); *Unemployment Comp. Com. v. Aragon*, 329 U.S. 143 (155), 67 S. Ct. 245, 91 L. Ed. 136 (1946); *Davis Administrative Law Treatise*, Section 20.06. Besides, the paramount power of Congress to regulate interstate commerce forces even express charter or lease provisions to give way before it. This has been held many times and is no longer in question. *Colorado v. United States*, 271 U.S. 153 (165-166) 46 S. Ct. 452, 70 L. Ed. 878 (1926); *Texas v. United States*, 292 U.S. 522, 531, 54 S. Ct. 819, 78 L. Ed. 1402 (1934); *Moeller v. Interstate Commerce Commission*, 201 F. Supp. 583 (S. D. Iowa, 1962); *Burke County, Georgia v. United States*, C.A. 1031 (S.D. Georgia, July 2, 1962, opinion not published).

Plaintiffs also seek to invoke the doctrine of res judicata to bar the ICC from considering the question of public convenience and necessity, alleging that this issue has been determined by the North Carolina Supreme Court in *State of North Carolina v. Southern Railway Company*, 254 N.C. 73, 118 S.E. 2d 21 (1961). This position cannot be sustained. Res judicata is a common law device to prevent litigation of matters already litigated between the same parties or those in privity with them. *United States v. California Bridge & C. Co.*, 245 U.S. 337 (341), 38 S. Ct. 91, 62 L. Ed. 332 (1917). It is clear that a statute may change this common law rule. The statute before us, sec-

tion 13a(2), provides "... [W]here the State authority having jurisdiction thereof shall have denied an application ... for authority to discontinue ..., [the] carrier ... may petition the [Interstate Commerce] Commission for authority ... the Commission may grant such authority only after a full hearing and upon findings by it ...". Since the statute requires the ICC to hold full hearings and to make findings, after a state decision, it seems quite clear that Congress did not intend for the state hearing to have res judicata effect. Cf. *Sprague v. Wall*, 7 Cir., 122 F. 2d 128 (1941); *NLRB v. Pacific*, 8 Cir., 228 F. 2d 170, 176 (1956). This interpretation is reinforced by the legislative history of section 13a(2) which shows that Congress was motivated by a belief that State authorities were unduly regressive in that they often required continuance of uneconomic and unnecessary service. (S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22, H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958), pp. 11-12). The conclusion follows that Congress did not intend the ICC to give State determinations res judicata or collateral estoppel effect.

We proceed to the substantive issue in the case.

ISSUES INVOLVED

The central issue in the case is whether the order of the ICC authorizing discontinuance of the two trains is warranted in law and is supported by adequate findings based on substantial evidence of record.

Judicial review of an order of the ICC is limited. We may not set aside the ultimate findings of the Commission unless they are unsupported by substantial evidence on the record considered as a whole, involve error of law, or are arbitrary or capricious or constitute an abuse of discretion. Administrative Procedure Act, 5 U.S.C.A. § 1009(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 95 L. Ed. 456, 71 S.Ct. 456 (1950); *Carolina Scenic Coach Lines v. United States*, 56 F. Supp. 801, 804 (W.D. N.C. 1944), aff'd 323 U.S. 678, 65 S. Ct. 277, 89 L. Ed 550 (1944). It is not the

function of this court to appraise the conflicting testimony or other evidence, to judge the credibility of witnesses and to determine the weight of the evidence. A court "cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, that has support in the record and the applicable law." *U. S. v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536, 66 S. Ct. 687, 90 L. Ed. 821 (1946). But the order must be reversed if the Commission in arriving at its determination departed from the applicable rules of law and if its finding was arbitrary and capricious and had no basis in substantial evidence on the record as a whole.

Plaintiffs contend that the conclusions of the Commission must fall because made under a mistake of law. Specifically, they argue that the Commission's conclusion that the continued operations would constitute "an unjust and undue burden upon the interstate operations of Southern Railroad and upon interstate commerce" was made without considering the over-all prosperity of the carrier and the total operations of the carrier on the line involved, and that in such failure lies error. We think plaintiffs' position is well-taken.

As a matter of law, we think that the ICC cannot be said to have made a proper finding unless it takes into account the profits that the Southern Railway makes in its freight operations on the same intrastate line. *Chicago, M. St. P. & P.R. Co. v. Illinois*, 355 U.S. 300, 78 S. Ct. 304, 2 L. Ed. 2d 292 (1958); *Public Service Com. of Utah v. United States*, 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886 (1958). Unless this is taken into account, the full weight of the burden placed upon interstate commerce by these intrastate operations cannot be determined. *Chicago* and *Utah* cases, *supra*. At the time of the decision of the Supreme Court in *Chicago, M. St. P., P. R. Co. v. Illinois*, *supra*, Title 49 U.S.C. section 13(4) provided that the ICC

could change intrastate railway rates where they discriminated against interstate commerce in favor of intrastate commerce. The Supreme Court in the *Chicago* case held that the true nature of the burden on interstate commerce caused by discriminatory rates could not be assessed unless the other revenues in that state were taken into account. As stated by the Supreme Court (P. 305): "the occasion for the exercise of the federal power asserted by section 13(4) is the necessity for effecting the required contribution by intrastate traffic of its proportionate share of the revenues necessary to pay a carrier's operating costs and yield a fair return." In order to determine the burdens on interstate commerce caused by an intrastate loss, it is necessary to take into account intrastate profits. Cf. *North Carolina v. U. S.*, 325 U.S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760 (1945).

If losses in an intrastate operation are so exceeded by profits of intrastate operation of the same general type in the same state, so as to pay operating expenses and yield a high profit, the net effect on interstate operations is not a burden on interstate commerce. If the ICC is then to cut off all of the intrastate operations that suffer a loss, while retaining all others, the result would be to require the intrastate operations to bear more than their share. The intent of Congress was to prevent burdens on interstate commerce, not require tribute therefor.

It must be remembered that the state has a legitimate interest in intrastate commerce—"intrastate rates are primarily the state's concern and federal power is dominant 'only so far as necessary to alter rates which injuriously affect interstate transportation.' *North Carolina v. U. S.*, supra, at 511 . . . [justification for the exercise of this exceptional federal power] must 'clearly appear'", *Chicago, M. St. P. & P. R. Co.*, supra. To find that segment of intrastate operations represents an ultimate "burden" upon interstate commerce without reference to the question of whether intrastate operations generally on the same line

make it such a burden might permit the entire field of intrastate operations to be federally arrogated by a separate treatment of segments unrelated to the net or total effects.

The *Chicago* and the *Utah* cases cited above are rate and revenue cases brought under section 13(4) rather than discontinuance cases under section 13a(2). It is clear, however, that section 13(4) cases furnish analogous authority for section 13a(2) cases. The "unjust and undue burden" standard contained in section 13a(2) derives from section 13(4) of the Act and from judicial decisions relating to the power of the Commission to prescribe intrastate rates which impose an unjust or undue burden on interstate commerce. In section 13a(2) Congress also intended to prevent burdens on interstate commerce by intrastate operations that do not bear their full share of costs and profit. S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22; H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958) pp. 11-12. Indeed, section 13a(2) cases stand in an a fortiori relationship to section 13(4) cases. For to allow passenger service to be abandoned, in this case altogether, as contrasted to raising passenger fares, involves a far more serious incursion upon the traditional rights of the states. See *Southern Railroad Co. v. South Carolina Public Service Company*, et al, 31 F. Supp. 707, 710, (E.D. S.C. 1940).

But defendants contend that the authority of the *Chicago* and the *Utah* cases cited above has been vitiated by the amendment to section 13(4), 75 Stat. 570 Pub. L. 85-625 section 4, an amendment which was keyed directly to these cases. The amendment was enacted on August 12, 1958; *Chicago* was handed down in January of 1958 and *Utah* in May of 1958. Section 13(4) was amended to allow the ICC to make a determination that intrastate railway rates discriminated against interstate commerce "without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the oper-

ations or results thereof of any carrier . . . wholly within any state.”

In our opinion, the amendment to section 13(4) does not overturn the existing law applicable to discontinuance cases. Section 13a(2) was enacted at the same time that section 13(4) was amended. At that time, the purpose of amending section 13(4) was fresh in the minds of Congress. If Congress had decided not to require the IOC to take into account the net result of the total operations of the intrastate lines in discontinuance cases as well as rate and revenue cases, it would have been easy to have amended

² Section 13(4) was amended by the addition of the underlined portions:

“Section 13, par. (4) Duty of Commission where State regulations result in discrimination. Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice caused any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, *or undue burden on*, interstate or foreign commerce *(which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier or group or groups of carriers wholly within any State)*, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged; and the classification, regulation, or practice thereafter to be observed, in such manner as in its judgment, will remove such advantage, preference, prejudice, discrimination, *or burden* . . .”

proposed section 13a(2) just as section 13(4) was amended. This was not done.³

In any event, all that the major addition to section 13(4) does is to provide that the ICC "may . . . make their determination without a separation of interstate and intrastate property, revenues and expenses, and without considering in totality the operation or results thereof of any carrier . . . wholly within any state." This seems to mean that the Commission may decide without having to look into the above matter. However, where, as in this case, the matter was presented to the ICC, it would not seem likely that Congress intended the ICC to ignore these factors. The new provision indicates that the ICC may make a decision under section 13(4) without considering the totality of intrastate operations when the facts as to totality of intrastate operations have not been presented to the Commission by the parties. However, where they are presented, they should be taken into account. The permissive phraseology of the section would appear to us to mean that a decision of the Commission will not be upset simply because it fails to find specifically these facts where they have not been put in issue by the evidence before the Commission, but this does not mean that

³ It has been argued that since Congress amended section 13(4) to add the words "undue burden", and at the same time enacted section 13a(2) using the words "undue burden", Congress intended that the new provisions of section 13(4) were to be applied to section 13a(2). In other words, the argument is that the new addition to section 13(4) became a definition of "undue burden". However, it would appear more likely that the major amendment to section 13(4) was a grant of additional power to the ICC in applying section 13(4), rather than a new definition of "undue burden."

such facts where relevant and pertinent are not to be considered.⁴

⁴ Another possible interpretation of the amendment is that it allows the ICC to make a change in rates without considering the overall statewide totality of a carrier's results—i.e. without considering *all* rates within a state—but does not mean that the totality of operations on the particular line in question should not be considered. See Conf. Report, Administrative News, 85th Cong. 2d Sess., at pps. 3484-5:

“The amendment (to section 13(4)) deals only with the nature of the evidence to support such a finding. By two recent decisions of the Supreme Court (*Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. State of Illinois* (January 13, 1958), 355 U.S. 300, 356 U.S. 906, 78 S. Ct. 304, 665, and *Public Service Commission of Utah v. United States* (May 19, 1958), 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886), the Commission is required to consider the entire State operation, freight and passenger, in determining whether or not the intrastate freight rates were causing an undue revenue discrimination against interstate commerce. If the holdings in these cases mean that the required finding of—

undue, unreasonable, or unjust discrimination against or undue burden on, interstate or foreign commerce—can be made only in the light of the overall statewide totality of a carrier's operating results derived from its entire body of rates applicable within the State, it would preclude the Commission from making such a finding on a showing of only the effect of the particular rate or rates in question. The Commission could not, under such an interpretation, continue to function effectively in removing unjust discrimination against interstate commerce caused by interstate rates and charges.

... The above three amendments to paragraph (4) of section 13 do not vest the Commission with jurisdiction that it does not have today but deal with procedures in the exercise of that jurisdiction better to strengthen the protection of interstate commerce as designed in this provision of the act.”

This interpretation of the amendment to section 13(4) is the one adopted by the courts. In *Utah Citizens Rate Association v. United States*, 192 F. Supp. 12 (D. Utah 1961), the three judge court stated at p. 18 that "We believe that a matter of procedure rather than any substantive change in the basic transportation policy of the Congress is involved [in the amendment.] If this were not so, serious conceptual and constitutional; and further practical difficulties, would be invited. . . . The legislative history of the amendment bolsters this view." *Utah* was affirmed per curiam in 365 U.S. 649, 81 S. Ct. 834, 5 L. Ed. 2d 857 (1961).

It would, therefore, appear that when making a determination under section 13a(2) to discontinue one type of service on a line, where such facts are pertinent and relevant, and especially when such facts are before the Commission, the ICC must take into account the revenues from all services on the line. Without taking this into account, an interference of this nature into the completely intrastate affairs of any state based upon the burden that state has placed upon interstate commerce cannot be supported.

Both the Trial Examiner's Report and the decision of the ICC below indicate that they did not take this factor into account. The following appears at pages 11 and 12 of the Examiner's Report:

"At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,699, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the examiner disagrees."

On appeal, Division 3 of the ICC followed the Examiner's position (at pp. 4, 5):

"But, interveners argue, petitioner's net income from freight traffic over the line is such that over-all profita-

ble operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in ~~an~~ unconstitutional application of the provisions of the statute. In short, interveners allege that petitioner's net income from its freight operations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the intent of Congress under the statute here involved. By analogy, interveners' view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act."

The ICC then states the rule to be as follows (p. 5): *

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposed an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress.

The examiner and the ICC have misconstrued the intent of Congress and the contentions of the plaintiffs, as well as the applicable law. It is a non-sequitur to say that "by analogy, interveners' plaintiffs view would require a determination that overall losses have resulted on traffic handled

* Quoting from *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 ICC 631.

over the line." Plaintiffs do not contend—and it is not the law—that there can be no discontinuance unless freight and passenger service considered together show a net loss. Rather, plaintiffs' contention is that the \$630,000 freight profit is a factor to be considered in determining whether the \$90,000 passenger loss on the same line constitutes an unjust and undue burden on interstate commerce. Whether there is a net profit or net loss is not necessarily the controlling factor, but the amount of the net profit or net loss is a factor to be considered. Whether the operation of the passenger service is a burden on interstate commerce and whether there is any longer a public need sufficient to justify the financial losses involved are questions not susceptible of scientific measurement or exact formulae but are questions of degree and involve the balancing of conflicting interests. All material factors bearing on the questions must be taken into account, the ICC must consider a fair picture.* Because Congress has expressed concern over

* See *Colorado v. United States*, 271 U.S. 153, 168-9; 70 L. Ed. 878, 885, (Brandeis, J): "In many cases, it is clear that the extent of the whole traffic, the degree of dependence of the communities directly affected upon the particular means of transportation, and other attendant conditions, are such that the carrier may not justly be required to continue to bear the financial loss necessarily entailed by operation. In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted; in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier. The problem and the process are substantially the same in these cases as where the conflict is between the needs of intrastate and of interstate commerce. Whatever the precise nature of these conflicting needs, the determination is made upon a balancing of the respective interests—the effort being to decide what fairness to all concerned demands. In that balancing the fact of demonstrated prejudice to interstate commerce and the absence of earnings adequate to afford reasonable compensation are, of course, relevant and may often be controlling. But the act does not make issuance of the certificate dependent upon a specific finding to that effect."

the financial conditions of railway passenger service does not justify a reading of their intent to mean that if a segment of passenger service shows a loss, it is unnecessary to consider all other relevant factors, including the freight profits on the same line, to determine whether the loss constitutes a burden on interstate commerce.⁷

We hold, then, that the Commission should have considered the relative amount of profit on one service and loss on the other in making its finding of whether the passenger service here involved constituted an undue burden on interstate commerce.

SUBSTANTIAL EVIDENCE ON THE RECORD

In order to allow discontinuance under section 13a(2) the Commission must find, based on substantial evidence on the record as a whole, that (a) the present or future public convenience and necessity permit of such discontinuance, and (b) the continued operation or service without discontinuance in whole or in part, will constitute an unjust and undue burden upon the interstate operation of such carrier or upon interstate commerce. Title 49 USC section 13a(2).

The use of the words "undue" and "unjust" must mean that there are permissible burdens, that is, "due" and "just" burdens. There is an interrelation between findings (a) and (b). To make a determination, the Commission must weigh the public convenience and necessity against the burdens.

What then is the public convenience and necessity to be served by this railroad.

The record discloses that the two trains in question are the last remaining east-west passenger trains between

⁷ All relevant factors are considered in fixing freight rates. Southern has received six increases in freight rates since 1951, in all of which the size of passenger deficits were taken into account. ICC Record, Vol. 11, pp. 197-200.

Goldsboro and Greensboro, North Carolina. Until September 1954 Southern operated three pairs of passenger trains on this line. One pair of trains was discontinued in 1954 and another pair in 1958 which reduced the passenger service to trains Nos. 13 and 16 which are involved in this proceeding. The principal public convenience presently afforded by these trains arises from the interconnecting service at Greensboro with north-south trains on Southern's main line. The pullman service furnishes convenient overnight travel to New York and other East Coast cities, allowing a full working day to the traveler and thus conserving work time. A number of witnesses pointed out the superior convenience of this service to travel by air.

The City of Durham has the largest natural interest in the use of the trains, 46 per cent of the passengers embarking or leaving the trains there. This city has a population of 78,302. A witness for the railroad could recall only five cities in the United States with a population in excess of 70,000 that are without rail passenger service. The discontinuance of these trains would leave Durham County (1960 population 111,995), Alamance County (1960 population 85,674), and Orange County (1960 population 42,970) without any rail passenger service.* These three counties with a total population of 240,639 are located in the industrial Piedmont section of North Carolina.

The witnesses who testified at the hearings as to the need of these trains included:

1. Four members of the U. S. Army assigned to the Office of Ordnance Research located at Duke University who testified that the continuance of the trains was necessary for the satisfactory performance of their duties (relating to anti-missile missile work). Their individual annual use of the train was fifteen to twenty trips a year.

* Fifty of North Carolina's 100 counties are without passenger rail service. Durham County is $\frac{1}{3}$ larger in population than the largest county without such service. Record before North Carolina Supreme Court, p. 259.

2. Two students at Duke University testified as to their and other students' use and need of the trains.

3. Professors from Duke University and the University of North Carolina who testified as to the need of the trains in carrying on their duties.

4. Patients at Duke Hospital who testified as to the medical necessity of the trains in getting to and from their home in New York to the hospital.

5. Testimony of a Research Chemist from Philadelphia, Pennsylvania, as to his use and need for the transportation.

6. A textile executive from New York City whose company owns a mill in Durham testified as to his necessity for the use of the trains.

7. The Director of Transportation for Burlington Industries, Inc., Burlington, North Carolina, testified as to the need for the trains both for employees of the company and for buyers, suppliers and technical people visiting the plants of the company.*

8. The President of the Research Triangle Institute, a recently established nonprofit organization providing research service to corporations, governmental agencies and foundations, testified as to the use and need of the trains by his staff, and that the continued operation of the trains was extremely important to the proper functions of his organization. The Institute staff consists of 86 full time members today; it is anticipated that this figure will be 170 by the end of 1962.

* 30-40 employees of Burlington Industries are "regular" users, averaging approximately one trip a month each. Customers and buyers (especially women buyers) also use the train. Burlington Industries has assisted Southern in the removal of other schedules and originally did not protest the discontinuance involved here. Subsequent studies of the company needs caused Burlington to reverse its position. ICC Record, Vol. 111, pp. 374-6.

9. The President of the Golden Belt Manufacturing Company of Durham testified as to his use and need of the train. This witness explained the necessity for train travel in the operation of his business.

10. The President of the Burlington Chamber of Commerce testified that rail passenger service was instrumental in the growth of Burlington and that the discontinuance of trains would seriously handicap the area.

11. A Burlington Executive testified as to the need for the trains by himself, his buyers, and his customers.

12. The Dean of Trinity College of Duke University, who made twenty to twenty-five trips a year himself, testified as to the need and convenience of the trains.

13. The Secretary of the Committee on Educational Institutions of the Duke Endowment testified that his work required use of these trains.

14. A Professor of Physics and a Member of the Advisory Committee of Reactor Safeguards, a part of the Atomic Energy Commission, testified that his work required the use of the trains at an average rate of a trip per month.

15. The President of Duke University testified to his use of the trains and that of his trustees and that their continuance was a matter of convenience and necessity. (He had made five trips to New York since the first of the year.)

16. The General Manager of the Jack Tar Hotel in Durham testified that the continued operations of the trains serve a necessary and convenient purpose for the guests who stay at his hotel and that the removal of the trains would not only be detrimental to efforts to attract conventions to Durham, but would inconvenience those persons attending such conventions.

17. The Director of Durham's Committee of 100 testified as to the need of the trains in locating and retaining industry in the Durham Area.

18. The President of the Southerland Dye and Finishing Plant at Mebane, North Carolina, testified as to his use of the trains and their need in his area.

19. The Office Manager of the Belk Leggett Department Store in Durham testified as to his store's need of the trains for sending buyers to New York. The buyers consist of a group of four to six people going to New York once a month, ten months out of the year.

20. There was evidence of the need of the service in the industrial development of the area from Justin Kingston, a New York textile executive, now building a plant in Durham to employ two hundred to three hundred employees; from the Director of Transportation for Burlington Industries; from George Watts Hill, Chairman of the Board of the Home Security Life Insurance Company and of the Durham Bank and Trust Company, and numerous others. In addition, one witness, Dr. Thomas Powell, a man with an investment of a million dollars in the biological supply business in Elon, North Carolina, testified that the loss of rail passenger service might cause that business to leave North Carolina.

21. Evidence indicated that there are three universities in or near Durham (two in Durham, one in Chapel Hill in Orange County). A total of 14,737 students attended these institutions in 1958-9 and attendance is steadily increasing. There are eight hospitals located in or near Durham. Six are within ten minutes by ambulance or auto from the Durham railroad passenger service. The other two, Butner and Memorial Hospital are within twenty to twenty-five minutes. These hospitals treated a total of over 431,000 patients in 1959.

To summarize, in addition to the need for the services by the general public, the testimony indicated the need existed as to four principal areas: industry, hospital, Duke University, and the U. S. Army.

The record indicates that the trains serve a growing area. The Durham-Burlington area is already heavily industrialized, with Burlington Mills and Western Electric predominating in Burlington, and the cigarette industry in Durham. In addition, in the opinion of Southern's General Industrial Agent "this area holds great promise in the field of industrial development . . . the new Research Triangle will give tremendous impetus to this growth and create ever-increasing industrial interest in this section." (Southern's freight traffic on the Greensboro-Goldsboro line may be expected to benefit accordingly.)

That this is a growing area would be meaningless if the growth was not reflected in increasing use of the trains. Southern points to a very large decline in passengers from the year 1948 (an average of 77.51 per trip) to 1960 (an average of 20.2 per trip). This decline would seem to reflect the general revolution in transportation caused by the shift in travel from railways to air, bus, and private car. This decline appears to have bottomed out, however, and recent figures indicate that the use of the trains is increasing with the growth of the area:

PASSENGERS¹⁰

	1959	1960	1961 (5 months)
Total	14,251	14,776	8,934
Daily Average	19.5	20.2	29.6
Average Passenger mile per train mile ¹¹	6.83	7.33	9.97

¹⁰ These figures do not include any pass riders, which were estimated at the hearing before the State Utilities Commission at 80% of the total passengers.

¹¹ The evidence does not disclose the average number of passengers per train mile on the 55 mile portion of the line between Greensboro and Durham, although the principal public convenience presently afforded by trains Nos. 13 and 16 related to travel between these two cities. The line between Greensboro and Goldsboro is 129 miles long.

We note that the statute refers to "the present or future public convenience and necessity."

The increase in use may not be substantial (although it represents an increase of nearly 60 per cent in the daily average number of passengers patronizing these trains in the first five months of 1961 as compared with the entire year of 1959), but must be viewed in the light of Southern's failure to seek passengers. Plaintiffs accuse Southern of making a deliberate effort to discourage passenger service on the trains. Be that as it may, there is considerable evidence that Southern has done little, if anything, to promote greater use of these trains. The last advertising for the service before the commencement of these hearings occurred in 1951;¹² the president of the Research Triangle Institute testified that his associates did not know of the service until he told them. In contrast, there was testimony that Seaboard, with reference to its Raleigh service, actively advertised and solicited patronage and operated a well-staffed passenger office.

The ICC emphasized the availability of other means of travel to serve this area. There is good bus and air service, and the number of private automobiles is larger than the state-wide average. The fact of other methods of travel is a factor to be considered but it is not decisive. The statute speaks of convenience as well as of necessity. Also, the existence of *alternative* modes of travel in a heavily populated area should be considered a "convenience", and under some circumstances (such as air line strikes and bad weather) a "necessity."

What are the burdens imposed on interstate commerce by the operation of the trains?

The ICC found that the carrier's annual out-of-pocket savings resulting from the discontinuance of the two trains

¹² Six advertisements appeared in the Durham paper in 1960. ICC Record, Vol. 111, pp. 308, 335. The hearing before the North Carolina Public Utilities was on Oct. 6, 1959, and the decision was handed down on January 20, 1960.

would exceed \$90,000 each year.¹³ On this same line of track the railroad made a net freight operating profit of \$630,000 in 1960.

Taking into account total operation of this line, there is a profit not a loss, a benefit, not a burden. The relative amount of profit on one service and loss on the other is a factor.

When we turn from this particular line to the overall operations of Southern Railway, we find that the over-all profit of Southern Railway in 1960 for its entire system was \$30,702,542 after the payment of all taxes and all operating expenses. The figure for 1958 was \$30,254,231 and for 1959 was \$33,126,744.¹⁴ The accumulated surplus of Southern in 1960 was \$343,594,070. The effect of the losses of the Greensboro-Goldsboro passenger service on the financial structure of the railroad is inconsequential.¹⁵

¹³ Plaintiffs contended that the maximum out-of-pocket loss was only \$33,688 in 1960, while Southern contended it would exceed \$117,640. The difference is largely accounted for by plaintiffs' giving effect to the 58 per cent state and federal income tax deduction resulting from the deficit operation, on the ground that this is a cost borne by the state and national governments and thus would not affect the financial condition of the railroad itself and therefore could not affect interstate commerce by weakening the railroad's capital structure. But uneconomical transportation is not rendered less so by passing a portion of the burden to Federal and State governments in the form of reduced income taxes. . . . "an uneconomic outlay of funds would not be in the interest of transportation even though the money be derived from the national government." *Purcell v. United States*, 315 U.S. 381, 385 (1942). As far as the effect of the deficit operation on the shareholders and the financial structure of Southern is concerned, however, the argument carries weight.

¹⁴ ICC Record, Vol. 11, p. 202.

¹⁵ As to its effect on shareholders, the loss in 1960 reduced net profits by .0016% (after giving effect to state and federal income tax deductions).

The degree by which the loss impairs the ability of the carrier properly to serve interstate commerce is not substantial.

But it is unfair to compare the loss from a particular segment of a passenger rail line to the total profit of the company. Nor is this the test. The question is whether the particular segment of the railway involved is contributing its fair share to the over-all company operations, or whether its share constitutes a burden on the company and on interstate commerce. The evidence in the record is not clear or full on the question of whether this segment of the line is contributing its fair share to the over-all company operations, but the evidence points in the direction that the Greensboro-Goldsboro line contributes at least its fair share. For example, Southern's over-all passenger deficit in 1960 was \$14,669,798 on its 2,913 passenger miles. The average loss per mile is then \$5,035 on a system-wide basis. If we assume Southern's net operating passenger deficit on the Greensboro-Goldsboro line was \$117,641 for 1960 (on a line of 130 miles); then the average loss per mile was \$912.¹⁶ The evidence further indicates that the average revenue per passenger mile in 1960 was .0305 for trains Nos. 13 and 16, as compared with a company wide average of .0296 and a North Carolina average of .0301, indicating a greater revenue per passenger mile on the Greensboro-Goldsboro line than on the Southern's operations as a whole.¹⁷

We find no comparative figures relating to freight profits in the record. The amount of the freight profits on the

¹⁶ This figure is only approximate. Mr. Gleason testified that the \$14,669,798 included all losses while the \$117,641 was only the out of pocket losses resulting solely from the trains' operations. ICC Record, Vol. 11, pp. 209,211.

¹⁷ For the first five months of 1961, the Greensboro-Goldsboro figures had fallen to .0274 compared to a company average of .0300. We find no figures for other years. ICC Record, Vol. 11, pp. 164-5.

Greensboro-Goldsboro line was apparently arrived at by taking 61 per cent of the Southern Railway's average freight profits per mile multiplied by the total Greensboro-Goldsboro mileage.

The burdens of a public utility must be viewed in light of the principle that a public utility cannot shut off all unprofitable service—it must continue to serve, even at a loss as to some operations when the public convenience and necessity do not permit the loss of the service. Mr. Justice Frankfurter, in *Ala. Public Serv. Com. v. Southern Ry. Co.*, 341 U.S. 341, 71 S. Ct. 762, 95 L. Ed. 1002 puts it:

“Unlike a department store or grocery store, a railroad cannot of its own free will discontinue a particular service to the public because an item of its business has become unprofitable. . . . One of the duties of a railroad doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided because it will be attended by some pecuniary loss.”

Upon our examination of the entire record, in the light of the applicable principles of law, we fail to find substantial evidential facts to support the Commission's holding that the service in question constitutes an undue burden on the interstate aspects of the carrier's operations. The basic facts are not in conflict—nor is there any real conflict in the evidence offered by the parties. The question is whether there is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229, 59 S. Ct. 205, 217, 83 L. Ed. 126 (1933); *Davis, Administrative Law Treatise*, Vol. 4, p. 186. We think there is not.

"This court is specifically authorized by the Administrative Procedure Act (5 U.S.C.A. 1009) to "hold unlawful and set aside agency action findings and conclusions found to be arbitrary, capricious . . . or otherwise not in accordance with law . . . (or) unsupported by substantial evidence." By the provisions of Title 28, sec. 1336, jurisdiction is accorded to "set aside (or) annul any order of the Interstate Commerce Commission."

Pursuant to this authority, we hold unlawful and set aside the action of the Interstate Commerce Commission authorizing the carrier to abandon its passenger service. We also hold unlawful and set aside the ultimate conclusions of the Interstate Commerce Commission that the service in question constitutes an undue burden on interstate commerce and that the present or future public convenience and necessity permits such discontinuance. We hold that such action and conclusions are arbitrary and capricious because not in accordance with law and because not supported by substantial evidence.

We do not invalidate and do not set aside any of the subsidiary findings of fact made by the agency. Since we accord to them administrative finality, and since the record is complete bearing upon all aspects of the controversy, there would appear to be no occasion for remand. The procedure of remanding to an administrative agency is to afford the agency an opportunity to meet objections to its order by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings, or supplying findings validly made to take the place of those invalidated.¹³ None of these purposes would be served by remanding this case to the Interstate Commerce Commission for the simple reason that we have noted no irregularities in procedure and no important deficiencies in the record, and for the additional reason

¹³2 Am. Jur. 2d, "Administrative Law" sec. 764.

that we have invalidated no subsidiary findings of fact but only ultimate conclusions of law and agency action.

Judgment for Plaintiffs

.....
U. S. District Judge

.....
U. S. District Judge

.....
U. S. District Judge

October , 1962.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

C-158-D-62

STATE OF NORTH CAROLINA, et al

v.

SOUTHERN RAILWAY COMPANY, et al.

ORDER

The above entitled cause coming on to be heard on the 13th day of September, 1962, and all parties thereto having appeared by counsel, and the court having heard the arguments of counsel and having reviewed the record, and upon due consideration thereof it appearing to the court that the plaintiffs should be granted the relief prayed for in their complaint, it is therefore on this the 19th day of October, 1962,

ORDERED, ADJUDGED AND DECREED that the Order of the Interstate Commerce Commission be set aside and that the defendant, Southern Railway Company, its officers,

agents and employees, be permanently and perpetually enjoined and restrained from discontinuing passenger trains, nos. 13 and 16 between Greensboro and Goldsboro, North Carolina.

The defendant, Southern Railway Company has until 12:00 noon, 24th day of October, 1962, in which to comply with this order.

It is further ORDERED, ADJUDGED AND DECREED that the defendant, Southern Railway Company, pay the cost of these proceedings to be taxed by the Clerk of this court.

U. S. Circuit Judge

U. S. District Judge

U. S. District Judge

• October 19, 1962.

A true copy—

L. RICHARDSON PREYER
District Judge

APPENDIX B**The Report and Order of the Interstate Commerce Commission****INTERSTATE COMMERCE COMMISSION****Service Date July 2, 1962****Finance Docket No. 21563****Southern Railway Company Discontinuance of Service
between Greensboro and Goldsboro, N. C.****Decided June 27, 1962****Order issued granting petition of Southern Railway Com-
pany to discontinue the operation of trains 13 and 16****Between Greensboro and Goldsboro, N. C.****Arthur J. Dixon and Earl E. Eisenhart for Southern
Railway Company.****F. Kent Burns for State of North Carolina and North
Carolina Utilities Commission.****Robert B. Holton, W. J. Burton, Jr., and R. L. Carnes
for railway labor organizations, protestants.****Claude V. Jones, Victor S. Bryant, E. C. Bryson, E. C.
Brooks, Jr., A. H. Graham, Jr., and Francis E. Walker for
other protestants.****REPORT OF THE COMMISSION****DIVISION 3, COMMISSIONERS TUGGLE, HUTCHISON AND GOFF
GOFF, COMMISSIONER:**

Exceptions to the report of the hearing examiner recom-
mending the granting of the petition have been filed jointly
by the State of North Carolina, the North Carolina Utilities
Commission, Duke University, Mrs. Mary Trent Seamans,
Research Triangle Institute, and Erwin Mills, Inc., all in-
terveners in opposition. Petitioner, Southern Railway
Company has replied thereto. Oral argument requested by
the interveners was denied by order of the Commission,
Commissioner Tuggle dated February 12, 1962, served Feb-
ruary 16, 1962.

By petition filed April 6, 1961, the Southern Railway Company, herein called petitioner or the carrier, a common carrier by railroad subject to Part I of the Interstate Commerce Act, requests authority under section 13a(2) of the act to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C. A hearing was held in Raleigh, N. C., of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. Briefs were filed and a report and recommended order by the hearing examiner was served on October 27, 1961. We are in accord with the examiner's findings of facts and ultimate conclusions thereon which we hereby adopt as our own and will not restate herein except to the extent necessary for clarity of discussion. However, we believe that we should set forth our views on certain of the issues presented.

Prior to the filing of the petition with this Commission, the carrier on July 8, 1959, filed an application with the North Carolina Utilities Commission for authority to discontinue the operation of the same trains in question here. After hearing, the North Carolina Commission concluded that there was insufficient competent evidence in the record upon which to base a finding that public convenience and necessity for the continuance of the trains no longer exists and thereupon issued its order of January 20, 1960, denying the application. On appeal, a judgment of the Superior Court of Wake County, N. C., sustaining the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al. v. Southern Railway Company*, 254 N. C. 73.

With this history of adjudication of the State proceeding in support of their argument, interveners at the hearing on the petition before us moved for dismissal asserting that the action is *res judicata*. The examiner has recommended that the motion be overruled and interveners on exceptions,

contend error, reasoning that the issue of public convenience and necessity had been clearly litigated between the parties in the prior proceeding and was finally determined by a court of competent jurisdiction when the Supreme Court of North Carolina issued its decision on February 3, 1961, affirming the findings of the Superior Court.

We certainly do not question either the competency or jurisdiction of the North Carolina Utilities Commission or the Supreme Court of that State in the prior proceeding and respect their decision in that matter. We also recognize the finality of the Court's decision on questions within its judicial sphere. However, the issue before us on petition by Southern is whether public convenience and necessity permits the discontinuance of operation of the trains in interstate commerce, a question arising under a Federal Statute (section 13a(2) of the Interstate Commerce Act). Proceedings of this nature are not dissimilar to abandonment proceedings presented before us. Of the latter cases, Justice Brandeis, speaking for the United States Supreme Court in *State of Colorado v. United States*, 271 U.S. 153, 165-166 said:

Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission.

It follows that the question of public convenience and necessity as it affects interstate commerce and which is presently before us was not determined in the prior State proceeding and the doctrine of *res judicata* obviously is not applicable to the newly created legal situation. Accordingly, the motion is denied.

Interveners allege further error by the examiner in recommending that 2 other motions to dismiss the petition be overruled, namely (1) that section 13a(2) of the Act is unconstitutional on its face and in its application; and (2) that petitioner failed to meet the applicable regulations regarding proper notice to the public.

As the examiner has pointed out, it is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon to administer. See *Engineers Public Service Co. v. SEC*, 78 U.S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot, 332 U.S. 788; *Paintz v. District of Columbia*, 72 App. D.C. 131, 112 F. 23, 39; *Todd v. SEC*, 137 F. 2d 475, 478 (6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.), certiorari denied 332 U.S. 765; and *Public Utilities Commission v. United States*, 355 U.S. 534, 539. But, interveners argue, petitioner's net income from freight traffic over the line is such that overall profitable operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in an unconstitutional application of the provisions of the statute. In short, interveners allege that petitioner's net income from its freight operations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the in-

tent of Congress under the statute here involved. By analogy, interveners' view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act. Section 13a(2) specifically empowers the Commission to authorize the discontinuance of trains upon finding that (a) the present and future public convenience and necessity permit of such discontinuance or change in whole or in part of the operation or service of *such train or ferry*, and (b) the continued operation or service of *such train or ferry* without discontinuance or change, in whole or part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce (underscoring supplied).

The legislative history of section 13a(2) indicates that the purpose thereof is to permit the discontinuance of the operation of services that "no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). (Emphasis supplied). In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 I.C.C. 631, we stated:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

Nothing has been submitted herein to warrant a change in this view.

Nor can we agree with interveners that the petition in this proceeding should be dismissed for petitioner's failure

to observe the rule included in our order of November 12, 1959, requiring the posting of notice of the proposed discontinuance in each station, depot or other facility involved. While the statute clearly requires such posting of notice in proceedings instituted under section 13a(1), the statute is equally clear in not providing for such requirement under paragraph 2:

"When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least 30 days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; * * *"

It is further apparent that the inclusion of the requirement regarding the posting of notice in our order of November 12, 1959, and the resultant conflict between that order and section 13a(2) was caused by an obvious error in not amending section 43.6 to conform to the relettering of section 43.5 of our order¹ of the above date. Since petitioner complied with the rules and regulations promulgated by our order of August 14, 1958, and since there was no intent that our subsequent amending order of November 12, 1959, impose an additional requirement regarding notice upon petitioners in proceedings under section 13a(2), and since no specific evidence has been introduced to show that the position of any of the parties has been prejudiced or materially affected by our error, the motion of interveners is denied.

Interveners' exceptions include other assignments of error to the examiner (1) in computing the revenues and

¹ This oversight was corrected by the issuance of the Commission's order of November 28, 1961 (Ex Parte No. 217) in which section 43.6 was amended to eliminate reference to paragraph (j) of section 43.5.

expenses of operation of the trains involved, (2) in failing to give sufficient weight to the overall prosperity of the petitioner when considering whether continuance of the operation would constitute an undue burden on interstate commerce, (3) in failing to consider the increase in the average number of patrons in 1960 and the period of 1961 over the number of passengers utilizing the service in 1959, (4) in failing to recognize that petitioner had allowed service along and over the line to decline in order to present a plausible case for the abandonment of passenger service, and (5) in concluding that future industrial expansion of the area is not dependent upon existing rail passenger service.

In his determination of the financial results of operation the examiner has allowed or disallowed certain items of expense consistent with our prior decisions in similar discontinuance proceedings. Interveners have assailed the methods utilized in approximating certain cost items where the actual expense cannot be determined. However, they have offered no substitute formula whereby a more accurate determination may be made. Under the circumstances we will rely on the methods which have been acceptable to us in the past.

The contention that the overall prosperity of the petitioners must be given effect in the disposition of the issues involved herein has been adequately discussed in our consideration of one of interveners' motions and no further clarification of our position in that matter is necessary.

The fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961. The record also discloses that the increase in the 1961 period was due largely to an increased number of group movements of school children. However, despite the increase in patronage during the first 5 months of 1961, passenger revenues during that period amounted

to only \$10,653 or approximately \$26,000 less than train and engine crew wages.

The evidence of record fails to support interveners' contention that petitioner has deliberately discouraged the use of the trains as a part of its plan to present a plausible case for discontinuing passenger service over the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment and, as stated by the examiner, we have repeatedly held that prospective patrons who must be coaxed to use a service have no urgent need for it.

We have also expressed the view that while industrial expansion may, under certain circumstances, depend upon the existence of rail passenger service, it would appear that prospective industries are much more interested in freight service than rail passenger facilities. See *Chicago, M. St. P. & P. R. Co. Discontinuance of Service*, 307 I.C.C. 565, 578 and *Chicago & N. W. Ry. Co. Discontinuance of Service*, 307 I.C.C. 775, 782.

From a review of the evidence of record we conclude that the cost to the carrier of operating the trains involved greatly exceeds the benefit derived from said trains by the traveling public; that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express; that the public will not be materially inconvenienced by the discontinuance of the service here involved; that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce.

We have heretofore concluded that we have no authority under section 13a(2) to impose conditions for the protec-

tion of rail employees adversely affected by the discontinuance. While it is recognized that the probable adverse effect upon employees is a factor to be considered in determining public convenience, such probable adverse effect in the present proceeding does not afford a sufficient basis to justify continued operations of the involved trains.

Contentions of the parties as to either law or fact not specifically discussed herein have been given consideration and found to be without material significance or not justified.

We find that the present and future public convenience and necessity permit the discontinuance of service by the Southern Railway Company of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C., and that the continued operation thereof would constitute an unjust and undue burden upon the interstate operations of that carrier and upon interstate commerce.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D. C., on the 27th day of June, A.D. 1962.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINUANCE OF SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N. C.

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said Division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions of law, which report is hereby referred to and made a part hereof:

It is ordered, That interveners' motions to dismiss the proceeding be, and they are hereby denied.

It is further ordered, That the petition of the Southern Railway Company to discontinue the operation of the passenger trains specified in the aforesaid report be, and it is hereby, granted.

It is further ordered, That this order shall be effective 20 days from the date of service hereof; and

It is further ordered, That if the authority herein granted is not exercised within one year from the effective date thereof, it shall be of no further force or effect.

By the Commission, division 3.

HAROLD D. McCoy,
Secretary.

(SEAL)

APPENDIX C

The Recommended Report and Order of the Interstate Commerce Commission's Hearing Examiner, with Certain Exhibits Attached. Adopted as Part of the Commission's Report

INTERSTATE COMMERCE COMMISSION

Served October 27, 1961

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect, has been served.

Finance Docket No. 21563.

**SOUTHERN RAILWAY COMPANY
DISCONTINUANCE OF SERVICE BETWEEN
GREENSBORO AND GOLDSBORO, N. C.**

Decided.....

- (1) Motions of protestants to dismiss proceeding over-ruled.

- (2) Order granting petition of Southern Railway Company to discontinue the operation of trains 13 and 16 between Greensboro and Goldsboro, N. C.

Arthur J. Dixon and Earl E. Eisenhart for Southern Railway Company.

F. Kent Burns for State of North Carolina and North Carolina Utilities Commission.

Robert B. Holton, W. J. Burton, Jr., and R. L. Carnes for railway labor organizations, protestants.

Claude V. Jones, Victor S. Bryant, E. C. Bryson, E. C. Brooks, Jr., A. H. Graham, Jr., and Francis E. Walker for other protestants.

REPORT AND ORDER

RECOMMENDED BY WILLIAM J. GIBBONS, HEARING EXAMINER

On April 6, 1961, the Southern Railway Company, a common carrier by railroad subject to Part I of the Interstate Commerce Act, filed a petition under section 13a(2) of the Act for authority to discontinue the operation of trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C. A hearing was held in Raleigh, N. C. on July 11 through July 14, 1961, of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. The Southern Railway Company will be referred to herein as the "petitioner", the railway labor organizations and their representatives as "employees", and all other parties, including the State of North Carolina and the North Carolina Utilities Commission, will be referred to as "protestants". The proceeding has been referred to the examiner who presided at the hearing for a recommended report and order. Briefs have been filed.

On July 8, 1959, the Southern Railway Company filed an application with the North Carolina Utilities Commis-

sion for authority to discontinue the operation of the same trains that are involved in this proceeding. After hearing, the North Carolina Commission issued its order dated January 20, 1960, denying the application. On appeal, a judgment of the Superior Court of Wake County, N. C., affirming the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al. v. Southern Railway Company*, 254 N.C. 73.

At the outset of the hearing, protestants filed three separate motions to dismiss the proceeding on the grounds that (1) section 13a(2) is unconstitutional, (2) the decision of the Supreme Court of North Carolina which sustained the order of the State Commission is *res judicata*, and (3) no proper notice of the hearing was given as required by law.

It is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon to administer. See *Engineers Public Service Co. v. SEC*, 78 U.S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot 332 U.S. 788; *Panitz v. District of Columbia*, 72 App. D.C. 131, 112 F. 23, 39; *Todd v. SEC*, 137 F. 2d 475, 478 (6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.), certiorari denied 332 U.S. 765; and *Public Utilities Commission v. United States*, 355 U.S. 534, 539.

With respect to the second motion to dismiss, it is the position of protestants that the matter has been conclusively adjudicated by a court of competent jurisdiction and that all parties are bound by such determination in the absence of an allegation or showing of a change of conditions, and since no change in conditions has been alleged or shown, the decision of the Supreme Court of North Carolina, *supra*, is *res judicata*.

In the past, this Commission has superseded court decisions when the applicable statute clearly indicated that it should do so. *Chicago; S. S. & S. B. R.* 234 I.C.C. 34; *Street Elect. Ry. & M. Coach Employees v. C., A. & E. R. Co.* 234 I.C.C. 301; and *Sprague v. Woll*, 122 F. 2d 128, certiorari denied 344 U.S. 669. The jurisdiction of this Commission over the subject matter of this proceeding has been established by virtue of the denial of petitioner's application by the North Carolina Commission and the subsequent filing by petitioner of the petition herein. After the jurisdiction of this Commission has been properly invoked, section 13a(2) contemplates that the matter be tried de novo and that the prior determination by the appropriate State authority is of "an advisory nature only, having no binding effect upon this Commission." To hold otherwise would render section 13a(2) ineffectual or wholly inoperative. Moreover, section 13a(2) raises an issue with respect to the burden on interstate commerce, an issue, which neither the North Carolina Commission nor the North Carolina Supreme Court was empowered to determine. The doctrine of res judicata does not preclude relitigation when a new or different claim or issue is presented. For the above reasons, the examiner concludes that this Commission is not bound by the order of the North Carolina Commission or by the State Court decisions which affirmed that order.

Protestant's third motion to dismiss is based upon the ground that petitioner did not post notices of its proposed discontinuance in its stations, depots and passenger cars as required by law. In support of this motion, they contend that the applicable regulations (49 CFR 43.1) specifically state that the rules apply to a "notice" under sec-

¹ Section 13a(2) provides, among other things, that this Commission "is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph."

tion 13a(1) of the Act, or to a "petition" under section 13a(2), and further, that section 43.5(j) of the regulations requires that a copy of the notice of the proposed discontinuance be posted "in a conspicuous place in each station, depot or other facility involved, including each ferry and each passenger car . . ." (49 CFR 43.5(j)).

It is to be observed that the regulations define the term "notice" as a notice provided for in section 13a(1) of the Act, and the term "petition" as a petition filed under section 13a(2). (49 CFR 43.2). Section 43.5 of the regulations, paragraphs (a) through (k), specifically applies to a "notice" in a section 13a(1) proceeding, and section 43.6, paragraphs (a) through (d) specifically applies to a "petition" in a 13a(2) proceeding.²

Among other things, section 43.6 provides that petitions for authority to effect the discontinuance of a train shall contain information required by section 43.5 excepting paragraph (i) thereof. (49 CFR 43.6). By requiring all other information contained in section 43.5 excepting paragraph (i), section 43.6 would appear to require the carrier to comply with the notice posting requirement of section 43.5(j).¹

Despite the language of section 43.6, such a requirement on the part of the carrier was never intended in a section 13a(2) proceeding. As originally issued by this Commission on August 14, 1958, paragraph (i) of the section 43.5 contained the requirement with respect to the posting of notices in a section 13a(1) proceeding, and section 43.6, relating to petitions, required the information set forth in section 43.5 excepting paragraph (i) thereof. (23 F.R. 6378, August 20, 1958). Thus, it is clear that, as originally issued, the applicable regulations did not require that the notice called for in a section 13a(1) proceeding be required in a section 13a(2) proceeding.

² Sections 43.7 and 43.8 apply to notices and petitions.

By subsequent amendments to the regulations on November 12, 1959, a new paragraph (i) was added to section 43.5 and the then existing paragraph (i) was amended and redesignated paragraph (j). (25 F.R. 434, January 20, 1960). No amendment or change in section 43.6 was made at that time and through inadvertence or as a result of an apparent mishap, the reference to paragraph (i) was retained in section 43.6 when it (paragraph (i)) should have been relettered paragraph (j). Thus, the only conclusion that can be drawn from the administrative history of the applicable regulations as well as from the contemporaneous construction placed thereon by this Commission is that the type of notice required in a section 13a(1) proceeding is not required in a section 13a(2) proceeding. In this connection, see *Pennsylvania R. R. Co.—Discontinuance of Passenger Service, Camden-Pemberton, N. J.*, F. D. No. 20553, decided June 6, 1960. To interpret the regulations differently would be inconsistent with the obvious intent expressed in sections 13a(1) and 13a(2) of the Act.

For the reasons stated, the 3 motions of protestants above-described to dismiss this proceeding should be overruled.

The trains sought to be discontinued, hereinafter identified as trains 13 and 16, operate daily between Greensboro and Goldsboro, a distance of 129.1 miles. As presently scheduled, eastbound train 16 leaves Greensboro at 6:10 a.m., and arrives at Goldsboro at 10:45 a.m., serving 12 intermediate stations on regular stops and 9 stations on flag stops. Train 13 leaves Goldsboro at 3:05 p.m., and arrives at Greensboro at 7:50 p.m., serving 10 regular intermediate stations and 11 flag stops. These are the last two passenger trains operating in an east-west direction between Greensboro and Goldsboro. Appendix A hereto shows the schedules of the trains, the regular stops, flag stops and the populations of the cities and towns served by the trains.

The trains regularly consist of a 1500-horsepower diesel electric locomotive, a passenger coach, and a combination car for passengers, baggage and express. In addition, on the portion of the run between Raleigh, N. C., and Greensboro, each train handles a sleeping car which, in turn, is handled on other passenger trains of petitioner between Greensboro and Washington, D. C., and on trains of the Pennsylvania Railroad between Washington and New York City, thus providing through sleeping car service between Raleigh, Washington, Philadelphia and New York City. The trains carry express but no mail. The trains are operated by a 5 man railroad crew consisting of an engineer, fireman, conductor, flagman, and brakeman. Although one crew makes a round trip, two crews are necessary in the operation because of limitations on the number of working days. In addition, a pullman conductor and a porter work the sleeping cars and an express messenger works the trains 5 days a week.

During the periods indicated below, the total number of passengers carried on trains 13 and 16, the daily average on each train and average passenger mile per train mile were as follows:

Passengers

	1959	1960	1961 (5 mos.)
Train 13	6,462	7,076	4,384
Train 16	7,789	7,700	4,550
Total	14,251	14,776	8,934

Daily Average

	1959	1960	1961 (5 mos.)
Train 13	17.7	19.3	29.0
Train 16	21.3	21	30.1
Total	19.5	20.2	29.6

Average Passenger Mile Per Train Mile

	1959	1960	1961 (5 mos.)
Train 13	6.51	7.16	10.67
Train 16	7.16	7.50	9.27
Total	6.83	7.33	9.97

Appendix "B" shows the on-and-off passenger count at each station for train 13 in 1960 and the daily average at each station. Appendix "C" shows similar data with respect to train 16 in 1960. In 1959 and in the first 5 months of 1961, the pattern of entrainment and detrainment was substantially the same as in 1960. As shown by these statistics, the overwhelming majority of the stations served averaged less than 1 passenger a day boarding train 13 or 16. Of the total passengers (7076) carried by train 13 in 1960, 989 passengers entrained at Goldsboro, 826 at Raleigh, 2,929 at Durham and 1,464 at Burlington, and 5,048 passengers detrained at Greensboro. Of the total passengers (7,700) carried by train 16 in 1960, 5,101 entrained at Greensboro, 112 at Burlington, 775 at Durham and 667 at Raleigh. All but 1,279 of these passengers on train 16 detrained before reaching the end of the line at Goldsboro, the heaviest detrainment (2,712) occurring at Durham, and at Burlington and Raleigh, with 1,275 each.

In 1948, both trains carried 56,739 passengers an average of 77.51 per trip, as compared with a total of 14,776, or an average of 20.19 per trip, in 1960. During the same period, total passenger revenues declined from \$60,534, or an average passenger revenue of \$82.70 per trip, to \$21,135 or \$28.87 per trip. In 1959, 1960 and during the first 5 months of 1961, the average revenue per passenger was respectively, \$1.39, \$1.43, and \$1.19. Each train earns from 21 to 22 cents per train mile in passenger revenue, and about 34 cents per train mile in express revenue.

As shown by petitioner's exhibits, the revenues derived from the operation of the trains in 1959, 1960, and the first 5 months of 1961, the direct expenses incurred in connection therewith and the expenses in excess of revenues were as follows:

	1959	1960	1961 (5 mos.)
<i>Revenues</i>			
Passenger	\$19,839	\$21,135	\$10,653
Express	\$31,875	\$31,630	\$ 4,697
Miscellaneous	\$ 356	\$ 336	\$ 140
<i>Total Revenues</i>	\$52,070	\$53,101	\$15,490
Direct Expenses	\$174,907	\$170,742	\$70,321
<i>Expenses in excess of Revenues</i>	\$122,837	\$117,641	\$54,831

Appendix D shows the details of the operating results for both trains for 1960. Similar data is of record for 1959 and for the first 5 months of 1961.

Passenger revenues are actual as determined from the tickets collected by conductors, showing station to station travel, the class of passage and the type of ticket used. When interline travel is involved, revenues are determined on a mileage pro rate. Miscellaneous revenues represent actual revenues received for the handling of newspapers, and express revenues are computed by the application of the system average revenue per carfoot mile to the carfoot miles assigned to trains 13 and 16. As to the computation of expenses, the wages of train and engine crews, vacation allowances, payroll taxes, and equipment rental are actual as shown by petitioner's books and records. Train fuel expenses were determined by applying the system average cost per gallon to the number of gallons of fuel consumed by these trains during a test period. Net losses from the operation of the sleeping car represents the excess of expenses over revenues between Raleigh and Greensboro, as billed to petitioner by the Pullman Company. Locomotive expenses are computed on the system average cost per diesel locomotive unit mile, and passenger car expenses are determined on a system average cost per passenger car mile. The joint facility expenses at the Goldsboro Union Station are computed on the basis of the number of cars moving in and out of the station.

Expenses resulting from damage to livestock and injuries to persons, incurred in 1960 and 1961, are actual. Neither of these expenses was incurred in 1959. Excluded from the carrier's operating costs are expenses for maintenance of tracks and structures, depreciation on equipment, traffic and supervisory expenses, property taxes, and general expenses. Other financial data presented by petitioner shows that system off-line revenues derived from the trains sought to be discontinued amounted to \$73,960 in 1959 and \$83,034 in 1960. After reducing these amounts by 50 percent as the cost of producing the revenue, the net feeder value of trains 13 and 16 was \$36,980 and \$41,517, respectively, in 1959 and 1960.

As a result of the discontinuance of these trains, petitioner claims that it will realize savings of \$122,837, which is equivalent to its out-of-pocket loss in 1959. In addition, it estimates that it will save another \$15,015 annually, made up of station expenses (\$4,046), rental for lease of property at Burlington (\$6,820), and heat and light in various stations (\$4,149).

With respect to other available methods of transportation, petitioner submitted data to show that 15 motor buses operate daily in each direction between Greensboro and Raleigh and 8 between Raleigh and Goldsboro, with 2 daily scheduled operations in through service between Greensboro and Goldsboro. In addition, local bus service is available twice a day in each direction between Raleigh and Durham. Most of the buses in the area provide through service to and from points beyond the terminals of trains 13 and 16, in addition to providing local service. Of the 23 stations served by trains 13 and 16, McLeansville, Glen and Rose are the only stations not directly served by motor bus.

Other rail passenger service is available at 4 stations now served by trains 13 and 16. At Greensboro, 7 trains of the petitioner in each direction provide daily service, and at Raleigh 6 daily trains of the Seaboard Airline Rail-

road are available in each direction. The Atlantic Coast Line Railroad operates 3 passenger trains daily in each direction through Selma, and 1 train a day through Goldsboro. These trains provide through service, including pullman accommodations, to and from, among other points, Washington, D. C., New York City, Atlanta, Ga., Birmingham, Ala., and Richmond, Va. In addition, daily air line service is available between the Raleigh-Durham and the Greensboro-High Point Airports and Washington, D. C., New York, Philadelphia, Chicago and other major cities.

At present most of the express traffic originating at and destined to Greensboro, Burlington, Durham, Raleigh, Selma and Goldsboro is handled by over-the-highway motor trucks of the Railway Express Agency, although it can still be transported via trains 13 and 16. At 8 of the smaller communities, which the Railway Express Agency is not presently authorized to serve by truck, express service is provided exclusively by trains 13 and 16. In the event the trains are discontinued, the Railway Express Agency proposes to handle all of the express by motor truck. In addition, other passenger trains previously mentioned herein provide express service at Greensboro, Raleigh, Selma and Goldsboro, and various bus lines in the area offer a limited express service.

For the most part, the 7 county-area through which the trains operate is traversed by a network of paved, all weather highways, at least one of which substantially parallels petitioner's railroad. Most of the communities served by the trains are located on improved highways or in close proximity thereto. In the area served by the trains, there is an average of one passenger automobile for every 2.9 persons as compared with an average for the entire State of one automobile for every 3.3 persons.

At the hearing before the North Carolina Public Utilities Commission, 18 public witnesses testified as to the need for the service provided by trains 13 and 16. In the instant proceeding, testimony was offered by 21 witnesses,

most of whom use the trains with varying degrees of frequency. Many of the witnesses testified as to the use of the trains by members of their families, their employees and associates. Fifteen of the opposition witnesses, including college professors, research scientists, business executives and government employees, came from the Durham area or had an interest there, and 3 were business men from Burlington. Their use of the trains is primarily for travel on the sleeping car between Durham or Burlington and Washington, D. C., Philadelphia, New York City and other intermediate points.³ For personal convenience or because of medical necessity, these persons use the trains instead of other available modes of transportation. One witness expressed concern about express service to and from Elon College,⁴ while others feared that the discontinuance of these trains would hamper the industrial development of the area. Through oral testimony, petitioner denied that the presence or absence of rail passenger service has any bearing on industrial development.

Other evidence or (sic) protestants relates to the uncleanness of the passenger stations on the line, and the deterioration of service generally, including the lack of dining facilities on the trains, the failure of petitioner to pre-cool the cars in the summertime and to properly heat them in the wintertime, and difficulties encountered in securing reservations. At the hearing, protestants took the position that poor service and lack of modern facilities, plus petitioner's failure to advertise or solicit business, are primarily responsible for the reduction in passenger patronage. As against this, petitioner contends that its passenger facilities are clean, comfortable and modern,

³ Durham and Burlington are 55 and 21.4 rail miles, respectively, from Greensboro, at which point the Pullman car on trains 13 and 16 is switched to and from other trains of petitioner.

⁴ For sometime in the past, express service at this station has been provided by truck.

and that in the past efforts to attract additional patronage through advertising and solicitation have been unproductive.

Both at the hearing and on brief, protestants assail the method used by petitioner in computing many of its expenses on the basis of system averages. In the past this method of computing locomotive and passenger car expenses has been approved in train discontinuance proceedings as reasonably approximating the actual expenses incurred. *Louisville & N. R. Co., Discontinuance of Service*, 307 I.C.C. 173, and *Missouri Pac. R. Co., Discontinuance of Service*, 307 I.C.C. 787. As to the expenses at the Union Station in Goldsboro, these expenses are actual and will be savable to petitioner, since trains 13 and 16 are the last trains of petitioner using that terminal. Upon the discontinuance of the trains herein, the terminal expenses at Goldsboro would undoubtedly be redistributed among other carriers using the terminal. Since the terminal expense of the petitioner at Goldsboro amounts to about \$7,000 annually,* it does not appear that the redistribution thereof will impose an undue burden upon other carriers in interstate commerce. In this connection, see *Wabash Railroad Company Discontinuance of Service Between Toledo, Ohio, and Fort Wayne, Ind.*, F. D. No. 20710, decided November 30, 1959.

It is doubtful that full recognition should be accorded to expenses for damage to livestock and injury to persons, since neither of these recur with sufficient regularity to treat them as part of petitioner's normal operating expenses. Inasmuch as both items of expense are insubstantial, the exclusion of them from petitioner's operating results will not alter the ultimate findings made herein.*

* Terminal expenses at Goldsboro were \$6,350 in 1959 and \$6,940 in 1960.

* In 1960 expenses for injuries to persons were \$500 and for damage to livestock \$50. In 1961 expenses for injuries to persons was \$3,500. Neither of these expenses was incurred in 1959.

Except for these, the remaining expenses presented by petitioner are directly attributable to the operation of the trains and appear to be proper and fairly realistic.

In determining the net feeder value of these trains, the protestants contend that the reduction of the gross system-connected revenues by 50 percent, as representing the cost of producing such revenues, is purely speculative. Protestants, however, suggest no alternative cost formula. In rail abandonment proceedings as well as in train discontinuance cases, the Commission has accepted the 50 percent formula as reasonably reflecting the cost of producing system off-line revenues. *Chicago, M. St. P. & P. R. Co., Discontinuance of Service*, 307 I.C.C. 565. In the absence of a more precise method for determining net feeder value, the examiner accepts as reasonable the 50 percent cost formula used by petitioner.

It is the further position of protestants that revenues are understated since no revenue was assigned to the trains for the transportation of pass riders. In a recent case, the Commission, in rejecting a similar contention, observed that "constructive revenues or phantom revenues—revenues from fares never collected—are of no measurable financial advantage to the carrier, and, thus should be disregarded in the computation of total revenues." *Southern Pacific Company Partial Discontinuance of Passenger Trains Between Los Angeles and Sacramento; Oakland and Sacramento; and San Francisco and San Jose, Calif.*, F. D. 20503, decided August 11, 1961. These remarks are equally applicable here. While no doubt the carrier incurs some expense in the transportation of pass riders, the expenses involved should be considered as being merely incidental to the petitioner's primary responsibility of operating the trains for the benefit of the public. So long as the trains are required to operate, the additional cost of carrying pass riders or deadheads is infinitesimal. Thus, there is no basis for reducing or adjusting the expenses of these trains because of the pass riders. Similarly, there is no merit in protestants' contention that the computa-

tion of express revenues on a car-foot mile basis is improper. See, *Chicago & N. W. Ry. Co. Discontinuance of Service*. 307 I.C.C. 775.

Another contention of protestants' is that any operating deficit on this line should be reduced by a percentage amount equivalent to the combined federal and State corporate income taxes. In considering and rejecting a similar contention in *New York Central R. Co. Abandonment*, 254 I.C.C. 745, 755, the Commission stated:

"The committee of Yonkers Commuters contends, in effect, that the actual loss of \$60,155 from the operation of the branch should be reduced to \$36,093 because if the loss had not been incurred, applicant would have paid a 40 percent Federal income tax on an equal sum, amounting to \$24,062, but obviously the loss was actually incurred, and it cannot reasonably be considered that it was less because applicant's total income [sic] tax might have been \$24,062 less than it would have been had it not been incurred."

The findings and conclusions in the above report were affirmed in *Public Service Commission of New York v. United States*, 56 F. Supp. 351, affirmed 323 U.S. 675, rehearing denied 323 U.S. 817. The Commission has recently reaffirmed its position on this issue. See *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc., supra*. The contention of protestants on this issue must accordingly be rejected.

At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,599, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the examiner disagrees. The legislative history of section 13a(2) indicates

that the purpose thereof is to permit the discontinuance of the operation of services that "no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). (Emphasis supplied). In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc., supra*, the Commission made the following pertinent statement:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

In this same connection, the argument that losing passenger operations must be supported by constantly increasing freight rates is also untenable. In rejecting this argument, the Commission stated that such "theory of regulation would not be consonant with the national transportation policy, and would be fraught with disastrous possibilities." *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, 61. Similarly, the fact that petitioner's system operations are profitable is entitled to little or no weight. See *New York Central R. Co. Abandonment, supra*, *Seaboard A. L. Ry. Co. Abandonment*, 257 I.C.C. 758, *Great Northern Ry. Co.—Discontinuance of Service, supra*.

Although protestants submitted no financial data with respect to trains 13 and 16, they contend on brief that the maximum loss incurred by the operation of these trains in 1960 was \$33,688 instead of petitioner's claimed loss of \$117,641. To reach this conclusion, protestants subtracted \$6,940 (terminal expenses at the Goldsboro Union Station) and \$41,517 (net feeder value) from petitioner's claimed

loss. From this amount (\$70,184),^{*} they further subtracted a federal income tax deduction (52 percent of \$70,184) of \$36,496.

For reasons hereinbefore stated, terminal expenses at Goldsboro have been allowed, and protestants' contention regarding income tax savings has been overruled. In the foregoing computation, protestants assume that petitioner will lose all system-connected revenue produced by these trains. Petitioner claims that it will retain all of it. Neither of these positions can be reasonably sustained. It seems obvious that petitioner will neither lose nor retain all of such revenue. The exact amount of system-connected revenue losses, however, can not be determined from the record. But assuming that the entire net feeder value of these trains will be lost, petitioner's minimum out-of-pocket loss from the operation of these trains, on the basis of 1960 figures and after deducting \$550 for non-recurring expenses resulting from injuries to persons and livestock would be \$75,574 annually. Add to this the savings of \$15,015 in station expenses, previously referred to herein, and the net savings to be realized from the discontinuance of these trains would be at least \$90,589 a year. On the theory that some of the feeder value will be retained, the examiner⁶ is of the opinion that the annual savings will be considerably in excess of \$90,589 a year.

Among others, the factors to be considered in a proceeding of this nature are the populations of the communities served, the use made by the public of the trains sought to be discontinued, other means of transportation in the area, and the financial losses sustained by the carrier in providing the service. *Colorado v. United States*, 271 U.S. 153. Under the provisions of section 13a(2), the Commission's determination must be designed to protect interstate commerce from onerous burdens which may affect the ability of the carrier to continue to provide efficient

^{*} There appears to be a mathematical error of \$1,000 in protestants' calculation.

transportation service to the public generally. Thus, in determining public convenience and necessity, the needs of the entire public, as distinguished from the relatively few, must be taken into account. When there is a demonstrated need for the service, the continuation thereof might be justified even at a loss to the carrier. In the final analysis, however, the need for the service must be balanced against the losses sustained in providing the service.

That some need exists for the service of trains 13 and 16 is shown by the testimony of the opposition witnesses. Their need, however, is relatively insubstantial when viewed in the light of the density of the population of the area served and the patronage that is potentially available. Only scattered opposition appeared at the hearing in this proceeding and at the hearing held by the North Carolina Commission, and most of the opposition came from Durham, with virtually none east thereof. It is obvious that the needs of these few would be insufficient to justify the institution of a new service. Conversely, it should be equally apparent that under the test of public convenience and necessity, their needs no longer justify the continuation of existing service.

In arriving at this conclusion, the fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961 as compared with the entire year of 1959. In actual numbers, the daily average for both trains increased from 19.5 in 1959 to 29.6 in the first 5 months of 1961.

These figures, however, are of minor significance because the comparison of two entirely different periods fails to take into consideration seasonal variations in passenger traffic patterns and for the further reason that the increase in 1961 was due largely to an increased number of group movements of school children. Moreover, the percentage increase becomes even less meaningful when considered in the light of petitioner's statement that 82,000 additional passengers a year on these trains would be required to en-

able it to break even. Despite the increase in patronage in the first 5 months of 1961, passenger revenues during that period amounted to only \$10,653, or \$26,020 less than the wages of the train and engine crews.

For most of the major communities, alternate passenger service is available by bus and by air and 4 communities have rail passenger service. Only 3 small communities would be left wholly without bus service. Likewise, express service by motor truck, as proposed by the Railway Express Agency, should be adequate for most of the communities. While industrial expansion may, under certain circumstances, depend on rail passenger service, it would appear that industry is much more concerned about rail freight service than rail passenger facilities. For this reason, and because of the ever-increasing use of automobiles in the area involved, the economic growth aspect of this case is relatively unimportant. Neither the isolated instances of poor service nor defective train equipment sustain protestants contention that petitioner has deliberately discouraged the use of these trains as part of its plan to present a plausible case for abandoning service on the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment on these trains. As to petitioner's failure to advertise the services of these trains, the Commission has repeatedly held that prospective patrons who must be coaxed to use a service evidently have no urgent need for it.

In the light of all these considerations, and for reasons hereinbefore stated, the conclusion is warranted that the continued operation of trains 13 and 14 [16] would constitute a wasteful service and would impose an unjust and undue burden upon the interstate operation of petitioner and upon interstate commerce.

At the hearing, employees of petitioner whose jobs may be adversely affected as a consequence of the discontinuance herein requested that appropriate employee protective conditions be imposed in the event the trains are dis-

continued. Although the 10 operating employees on the trains will be entitled to other jobs with equal or better pay, other employees with less seniority may be furloughed or temporarily displaced. Three station employees and 2 pullman employees may also be furloughed. For reasons expressed in *Missouri Pacific Railroad Company Discontinuance of Passenger Service*, 312 I.C.C. 105, the examiner concludes that there is no authority under section 13a(2) for the imposition of conditions for the protection of employees adversely affected by the discontinuance of intrastate trains. It is recognized, however, that the probable adverse effect which the discontinuance of service would have upon employees is a factor to be considered in determining public convenience and necessity. In the instant proceeding such probable adverse effect does not afford a sufficient basis, when considered in connection with all of the facts hereinbefore discussed, to justify the continued operation of the trains.

Contentions of the parties as to either fact or law not specifically discussed herein have been given consideration and found to be without material significance or not justified.

In consideration of the petition here, the evidence adduced at the hearing, the contentions of the parties, and being fully advised in the premises, the examiner is of the opinion and finds that present and future public convenience and necessity permit the Southern Railway Company to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N. C., and that the continued operation thereof would constitute an unjust and undue burden upon petitioner's interstate operations and upon interstate commerce.

In view of the findings herein, the examiner recommends that the attached order granting the petition be entered.

By Wm. J. Gibbons, Hearing Examiner.

WM. J. GIBBONS
(Signature) Wm. J. Gibbons

APPENDIX A
SCHEDULES OF TRAINS NOS. 13 AND 16 OPERAT-
ING BETWEEN GREENSBORO AND GOLDSBORO
AND POPULATIONS OF COMMUNITIES
SERVED

Read Down						Read Up
Daily						Daily
16	Miles			Pop.		13
A.M.						P.M.
6:10	.0	Lv. Greensboro	119,574	Ar. 7:50		
f 6:22	8.0	McLeansville	300*	f 7:25		
6:30	14.7	Gibsonville	1,784	f 7:16		
6:34	16.7	Elon College	1,284	f 7:10		
6:50	21.4	Burlington	33,199	7:02		
f 6:53	23.1	Graham	7,723	f 6:42		
6:57	25.8	Haw River	1,410	f 6:38		
7:10	31.7	Mebane	2,364	6:32		
f 7:20	37.0	Elfland	500*	f 6:21		
7:25	40.9	Hillsboro	1,349	6:15		
f 7:35	46.4	Glenn	n.s.*	f 6:06		
7:55	55.0	Ar. Durham	78,302	Lv. 5:55		
8:10	55.0	Lv. Durham		Ar. 5:55		
f 8:32	68.7	Morrisville	222	f 5:19		
8:39	72.8	Cary	3,356	5:14		
8:55	81.1	Ar. Raleigh	93,931	Lv. 5:00		
9:10	81.1	Lv. Raleigh		Ar. 4:30		
f 9:18	86.9	Garner	3,451	4:20		
9:30	96.1	Clayton	3,302	4:07		
f 9:39	103.7	Wilsons Mills	280	f 3:57		
10:00	109.2	Ar. Selma	3,102	Lv. 3:50		
10:00	109.2	Lv. Selma		Ar. 3:50		
f 10:08	111.9	Pine Level	833	f 3:30		
10:18	117.7	Princeton	948	3:23		
f 10:25	123.7	Rose	n.s.*	f 3:15		
10:45	129.1	Ar. Goldsboro	28,873	Lv. 3:05		
A.M.						P.M.

f—Flag stop.

n.s.—No population shown.

Source:

Southern Railway System Passenger Train Schedules, folder dated October 30, 1960. Population figures taken from Final 1960 Census, U.S. Bureau of the Census except that those marked with an asterisk * were obtained from Rand McNally Commercial Atlas & Marketing Guide, 91st Edition, 1960.

APPENDIX B

PASSENGERS HANDLED ON TRAIN 13

	On	D/A*	Off	D/A*
Goldsboro, N. C.	989	2.7	—	—
Rose, N. C.	1	—	2	—
Princeton, N. C.	75	.2	130	.4
Pine Level, N. C.	18	—	18.	—
Selma, N. C.	340	.9	201	.5
Wilsons Mills, N. C.	29	.1	23	.1
Clayton, N. C.	124	.3	17	—
Garner, N. C.	57	.2	6	—
Raleigh, N. C.	826	2.3	371	1.0
Cary, N. C.	25	.1	70	.2
Durham, N. C.	2929	8.0	453	1.2
Glenn, N. C.	1	—	53	.1
Hillsboro, N. C.	51	.1	266	.7
Effland, N. C.	—	—	12	—
Mebane, N. C.	117	.3	38	.1
Haw River, N. C.	1	—	12	—
Graham, N. C.	4	—	3	—
Burlington, N. C.	1464	4.0	156	.4
Elon College, N. C.	17	—	57	.2
Gibsonville, N. C.	8	—	140	.4
Greensboro, N. C.	—	—	5048	13.8
Total	7076	19.3	7076	19.3

*—Daily Average

APPENDIX C

PASSENGERS HANDLED ON TRAIN 16

	On	D/A*	Off	D/A*
Greensboro, N. C.	5101	13.9	—	—
McLeansville, N. C.	—	—	2	—
Gibsonville, N. C.	3	—	17	—
Elon College, N. C.	19	.1	51	.1
Burlington, N. C.	112	.3	1275	3.5
Graham, N. C.	4	—	4	—
Haw River, N. C.	4	—	25	.1
Mebane, N. C.	68	.2	63	.2
Effland, N. C.	14	—	2	—
Hillsboro, N. C.	127	.3	58	.2
Glenn, N. C.	14	—	4	—
Durham, N. C.	775	2.1	2712	7.4
Morrisville, N. C.	—	—	4	—
Cary, N. C.	14	—	13	—
Raleigh, N. C.	667	1.8	1274	3.5
Garner, N. C.	49	.1	17	—
Clayton, N. C.	174	.5	374	1.0
Wilsons Mills, N. C.	4	—	30	.1
Selma, N. C.	147	.4	343	.9
Pine Level, N. C.	26	.1	20	.1
Princeton, N. C.	378	1.0	133	.4
Goldsboro, N. C.	—	—	1279	3.5
Total	7700	21.0	7700	21.0

*—Daily Average

APPENDIX D

Operating Results of Passenger Trains 13 and 16 between
Greensboro, N. C. and Goldsboro, N. C. Year 1960

Revenues.

Passenger	\$ 21,135
Express	31,630
Miscellaneous	336
Total Revenues	\$ 53,101

Direct Expenses:

Wages, Train and Engine Crews	\$ 89,182
Payroll Tax	5,250
Train Fuel	11,244
Injuries to Persons	500
Damage to Live Stock on R/W	50
Pullman Co. Net Loss	4,226
Engine House Expenses	1,590
Passenger Locomotive Lubricants	1,816
" " Other Suppl.	372
" " Repairs	21,586
" Train Cars—CHLW & Iceing	7,164
" " —Lubricants	447
" " —Other Exps.	942
" " —Repairs	13,692
" " —Air Cond.	5,060
Goldsboro Union Station	6,940
Rental of Equipment	681
Total Direct Expenses	\$170,742
Direct Expenses of Excess Revenues	\$117,641

Recommended by Wm. J. Gibbons, Hearing Examiner.
(Signature) Wm. J. GIBBONS

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION,
Division 3, held at its office in Washington, D. C. on
the day of A.D. 1961.

Finance Docket No. 21563

**SOUTHERN RAILWAY COMPANY DISCONTINU-
ANCE OF SERVICE BETWEEN GREENSBORO
AND GOLDSBORO, N. C.**

Investigation of the matters and things involved in this proceeding having been referred to and heard by the Hearing Examiner, who has made and filed a report containing his findings of fact and conclusions thereon, which report is made a part hereof, and said proceeding having been duly submitted:

It is ordered, That protestants' motions to dismiss the proceeding be, and they are hereby overruled.

It is further ordered, That the petition of the Southern Railway Company to discontinue the operation of the passenger trains specified in the aforesaid report be, and it is hereby granted.

It is further ordered, That the authority herein granted shall not be exercised prior to the date of service of an order adopting this order as the order of the Commission, or a notice stating that this recommended order has become the order of the Commission.

And it is further ordered, That if the authority granted herein is not exercised within one year from the effective date thereof, it shall be of no further force or effect.

By the Commission, division 3.

HAROLD D. McCoy,
Secretary.

(SEAL)

APPENDIX D

The Statute Involved, 49 U.S.C. 13a(2)

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph. (Feb. 4, 1887, ch. 104, pt. I, § 13a, as added Aug. 12, 1958, Pub. L. 85-625, § 5, 72 Stat. 571.)

APPENDIX E

**Excerpts from Legislative History of 49 USC 13a.
85th Congress, Second Session 1958**

1. Senate Report No. 1647, June 3, 1958, accompanying S-3778 pages 21,22:

5. ICC AUTHORITY OVER UNPROFITABLE SERVICES AND FACILITIES

A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce.

Railroad management, it must be understood, is not always free without authorization to discontinue, curtail, consolidate or otherwise change services or facilities in an effort to deal realistically with unprofitable, deficit-producing operations. Generally speaking, such matters fall within the scope of State law; and in a great many instances a railroad may not discontinue or change the operation of a train or other service or facility without first obtaining permission to do so from the regulatory authority of the State in which the operation is conducted.

Without reciting individual cases the subcommittee is satisfied that State regulatory bodies all too often have been excessively conservative and unduly repressive in requiring the maintenance of uneconomic and unnecessary services and facilities. Even when allowing the discontinuance or change of a service or facility, these groups have frequently delayed decisions beyond a reasonable time limit. In many such cases, State regulatory commissions have shown a definite lack of appreciation for the serious impact on a railroad's financial condition resulting from prolonged loss-producing operations.

To improve this situation, the subcommittee proposes to give the Interstate Commerce Commission jurisdiction in

the field of discontinuance or change of rail services and facilities similar to the jurisdiction it now has over intrastate rates under section 13 of the Interstate Commerce Act so that when called upon to do so it may deal with such matters that impose an undue burden on interstate commerce. This, the subcommittee believes, would protect and further the broad public interest in a sound transportation system and would prevent undue importance being attached to matters of a local nature.

2. House Report 1922, June 18, 1958, accompanying H.R. 12832 (U. S. Code Congressional and Administrative News, 1958, vol. 2 pages 3467-68):

A major cause of the worsening railroad situation is the unsatisfactory passenger situation. Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations.

Although no specific bill was then before the committee, extensive hearings on this problem were conducted in May of this year.

The true deficit from railroad passenger service is in dispute. The Interstate Commerce Commission estimates it is in the neighborhood of \$700 million a year, though it currently is conducting an investigation which involves reconsideration of its present rules governing distribution of costs between freight and passenger service. Whatever the deficit is, it is clear that it is large and constitutes a substantial burden on revenues from freight.

The president of one railroad testified that last year the railroad had net railway operating income from freight service of over \$100 million, against which it had a loss from passenger service of \$57 million; that over the past 10 years the passenger service net railway operating income deficit of \$523 million applied to a net railway operating income from freight of \$1,124 million, left it with a return of only 2.49 percent on depreciated investment; and

that if the passenger service merely had broken even this return would have been 4.67 percent.

Another railroad president testified that last year it had a net income of \$8 million, which represented a profit from noncarrier operations of \$27 million, net income from freight service of \$33 million, and a loss from passenger service of \$52 million. This loss he based on the ICC distribution of costs, whereas he felt that it was closer to \$78 million which had been estimated by an independent group.

It is obvious that in very great measure these passenger losses are attributable to commuter service. It is clear that where such necessary services cannot be made to pay their way, the interested communities have a very real interest in working out the problem. It would seem evident that if such urban or interurban commuting service must be preserved, losses incurred will have to be met in some way by the communities. It is unreasonable to expect that such service should continue to be subsidized by the freight shippers throughout the country.

There are substantial losses, however, occurring in passenger service beyond those attributable solely to commuter service. Where this passenger service—and passenger service means more than merely transportation of passengers, and involves “head-end” service, such as baggage, mail, and express—cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for.

Under the act, the Interstate Commerce Commission has jurisdiction over the complete abandonment of a line of track. The discontinuance or change of schedules of trains (without complete abandoning of the line of track over which they operate) however, is subject to the jurisdiction of the interested States. Such local regulation of what has come to be a national problem has hampered the railroads from making some changes in their passenger train operations in line with changes in patronage, and has contributed greatly to the passenger deficit.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. —

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, AND SOUTHERN RAILWAY COMPANY,
APPELLANTS

v.

THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court, 210 F.2 Supp. 675, and its final judgment are set forth in Appendix A, *infra*, pp. 18-47. The report and order of the Interstate Commerce Commission (Division Three) are not yet reported, but appear in Appendix B, *infra*, pp. 49-59. The report and recommended order of the Commission's Hearing Examiner are reprinted in Appendix C, *infra*, pp. 60-86.

JURISDICTION

This suit was brought under 28 U.S.C. 1336, 1398, 2284 and 2321-2325 to set aside and enjoin an order

of the Interstate Commerce Commission. The opinion and final order of the three-judge district court were entered on October 19, 1962. The Interstate Commerce Commission and the United States filed notices of appeal in the district court on December 17, 1962. An extension of time to March 19, 1963, for the filing of the record and the docketing of the appeal was entered by the lower court on February 8, 1963. The jurisdiction of this Court to review the district court's judgment by direct appeal is conferred by 28 U.S.C. 1253 and 2101(b), and is sustained by *New Jersey v. United States*, 359 U.S. 27; *Transit Commission v. United States*, 284 U.S. 360; and *Colorado v. United States*, 271 U.S. 153.

STATUTES INVOLVED

Section 13a(2) of the Interstate Commerce Act, 49 U.S.C. 13a(2) reads as follows:

Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect

such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. * * *

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether, under Section 13a(2) of the Interstate Commerce Act, the Interstate Commerce Commission must refuse permission to discontinue intrastate passenger trains when there is a substantial deficit from the passenger service and there is little public demand for it, solely because the total operation on the particular line involved is sufficiently profitable to make a fair proportionate contribution to overall company operations.

2. Assuming an affirmative answer to the first question, whether, in the circumstances of this case, the court was warranted in making a determination on its own initiative that the particular line as a whole did make a fair contribution to overall company operations, instead of remanding to the Commission for that determination.

3. Whether the district court invaded the Commission's discretion by re-evaluating the evidence and ruling that it did not support the conclusion that the discontinuance was consistent with public convenience and necessity.

STATEMENT

On July 8, 1959, the Southern Railway Company filed a petition with the North Carolina Utilities Commission to obtain permission to discontinue intrastate passenger trains Nos. 13 and 16 running between Greensboro and Goldsboro, North Carolina. The same equipment is used for both runs, the train bearing No. 16 when it is east-bound and No. 13 on the return trip. It is the only remaining passenger rail service between the two towns. The line involved is about 130 miles long. The State Commission denied permission to discontinue the trains, and the ruling was sustained upon appeal to the North Carolina Supreme Court. *North Carolina v. Southern Railway Co.*, 254 N.C. 73, 118 S.E. 2d 21.

Pursuant to the provisions of Section 13a(2) of the Interstate Commerce Act, Southern subsequently filed a petition with the Interstate Commerce Commission requesting permission to discontinue the same trains. A hearing was held before an examiner at which several protestants, including the State of North Carolina, appeared in opposition to the petition. On October 27, 1961, the examiner served his detailed report (App. C, *infra*, pp. 60-86). He found that the operation of the trains resulted in a net loss to Southern; that the public demand for the service was slight and had sharply declined since 1948; and that adequate

alternative means of transportation existed to serve the public. On this basis he ruled that the discontinuance of passenger trains Nos. 13 and 16 was consistent with the present and future public convenience and necessity and that their continued operation would constitute an unjust burden on the interstate operations of the carrier and an undue burden on interstate commerce. Accordingly, he recommended that the petition to discontinue the train service be granted.

Division Three of the Commission by its report dated June 27, 1962 (App. B, *infra*, pp. 49-59) adopted the findings and conclusions of the examiner and issued an order authorizing discontinuance. By way of clarification it also set out its own views on certain of the issues involved. A petition for reconsideration was denied.

The State of North Carolina and other protestants instituted an action in a three-judge district court seeking to set aside and enjoin the order of the Commission. On October 19, 1962, the court issued its opinion and decree (App. A, *infra*, pp. 18-47). The order (1) set aside the Commission's order; (2) required the Southern to reinstate, within five days, the service which had been discontinued pursuant to the Commission's order; and (3) "permanently and perpetually enjoined and restrained [Southern] from discontinuing passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, North Carolina" (App. A, *infra*, p. 46).

The court held that the Commission had erred in finding a burden on interstate commerce solely on

the basis of the deficits resulting from the operation of passenger trains Nos. 13 and 16. In the court's view, the freight operations of the company on the same segment of line should have been taken into account. Noting the profit realized on freight, which more than offset the loss from passenger services, the court thought the total line services between Greensboro and Goldsboro probably made a proportionate contribution to the company's operations (App. A., *infra*, p. 42). After re-appraising the public convenience and necessity related to the trains in suit, the court concluded that retention of the passenger service would not work an "unjust" or "undue" burden on interstate commerce (App. A., *infra*, pp. 44-45).

Although it found that the "evidence in the record is not clear or full on the question of whether this segment of the line is contributing its fair share to the over-all company operations" (App. A., *infra*, p. 42), the court declined to remand to the Commission for a determination of the question (App. A., *infra*, p. 45).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This case presents important questions involving the proper criteria to be applied in a discontinuance proceeding under Section 13a(2) of the Transportation Act of 1958 and is the first litigation of its kind to reach this Court.¹ Primarily at stake is whether

¹ *New Jersey v. New York, Susquehanna and Western R. Co.*, No. 104, decided February 18, 1963, ruled on the question of what constitutes an intrastate train under Section 13a(2).

in enacting Section 13a(2) Congress intended that interstate railroads must continue unprofitable intrastate passenger services for which there is little public demand whenever the freight service on the same line is sufficiently profitable to offset the loss and contribute a proportionate share to overall company operations. Resolution of this issue involves the proper interpretation of a statute concededly intended to help rehabilitate the seriously depressed railroad industry.

We submit that plenary consideration is also warranted because the court below, in reviewing the Commission's determinations under this recent statute, performed functions which only the Commission should perform. The court affirmatively found that the operation of the passenger service constituted no burden on interstate commerce and, in effect, that continuance was required by the public convenience and necessity; for, instead of remanding to the Commission, the court enjoined discontinuance of the service.

1. In a major effort to resolve the serious, and sometimes critical, financial difficulties confronting many of the nation's railroads, Congress passed the Transportation Act of 1958. 72 Stat. 568 *et seq.* A primary cause of that crisis was the excessive drain on railroad finances resulting from unprofitable passenger services and the serious obstacles encountered by the railroads in attempting to rid themselves of deficit operations. Section 13a of the Act was designed to alleviate this problem by facilitating the discontinu-

ance of burdensome services for which there is no great public demand. See *New Jersey v. New York, Susquehanna and Western R. Co.*, note 1, *supra*.

Prior to 1958, the power to authorize the discontinuance of any particular train service, whether interstate or intrastate, was exercised solely by the States. Consequently, for a railroad to discontinue any train that crossed state boundaries, permission of all States concerned was necessary. The Interstate Commerce Commission was not empowered to authorize discontinuance of particular trains; under Section 1(18)-(20) of the Interstate Commerce Act, 49 U.S.C. 1(18-20), it could only authorize total abandonment of the line, which meant the cessation of all services on that line. *Board of Public Utility Commissioners of New Jersey v. United States*, 158 F. Supp. 98 (D.N.J.), dismissed as moot, 359 U.S. 982.

It was with a view to facilitating the elimination of unprofitable services that Congress altered this scheme of regulation by the 1958 Act. Section 13a(1) permits rail carriers, without prior permission, to discontinue trains that operate across state lines, subject to an order directing resumption of that service if the Commission finds that the public convenience and necessity require it and that interstate commerce will not be unduly burdened. *New Jersey v. United States*, 168 F. Supp. 324, affirmed, 359 U.S. 27. Section 13a(2) of the Act empowers the Commission to order the discontinuance of a train operating "wholly within the boundaries of a single State" if the State has first denied permission or failed to act upon an

application within 120 days and if the Commission, after a full hearing, finds (1) that discontinuance is consistent with "the present or future public convenience and necessity" and (2) that continued operation "will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce."

The passenger service which the Southern Railroad seeks to discontinue is clearly a losing operation. The Commission found that the discontinuance of the two trains would result in net annual savings to the railroad in excess of \$90,000 (App. C, *infra*, p. 78). In authorizing the discontinuance, the Commission ruled that these losses were not justified by the meagre public demand for the passenger service² and that the existing demand could be adequately satisfied by alternative means of transportation.³ The court below reversed the Commission on the ground that no burden on interstate commerce could be established under Section 13a(2) because the railroad realized a substantial profit of \$630,000 (App. A, *infra*, p. 41) from its freight operations on the Greensboro-Goldsboro line. This, in the court's view, showed that the line, as a whole, made a proportionate contribution to company operations. The court also noted that the railroad's overall financial condition was sound.⁴

² The average number of passengers carried each day by each of the two trains was 19.5, 20.2 and 29.6 for 1959, 1960, and the first five months of 1961, respectively (App. C, *infra*, p. 67).

³ See note 14, *infra*.

⁴ In 1960 the Southern Railway Co. netted after taxes \$30,702,542 (App. A, *infra*, p. 42).

The standard applied by the court finds no support in the express language of Section 13a(2). Nor is it consistent with the intent of Congress as reflected in the legislative history. In enacting this section, Congress focused on the deficits produced by the specific service to be discontinued, not on the net of passenger and freight operations on a given line or upon the general operation of the railroad, at least in the absence of heavy demand for the service in question.* The report of the Senate Committee on Interstate and Foreign Commerce, S. Rep. No. 1647, 85th Cong., 2d Sess., p. 21, makes the point clear:*

* Contrary to the court's indication (App. A, *infra*, p. 25), the examiner, whose report was adopted by the Commission, did consider the overall financial condition of the carrier but concluded that in the circumstances, "petitioner's system operations are entitled to little or no weight" (App. C, *infra*, p. 77). It is true that this factor may be important when there is a heavy public demand for the deficit service, as is the case with many commuter services. However, as the Senate and House committee reports show (*infra*), Congress did not intend that only unstable railroads should be allowed to discontinue unprofitable services. To effectuate its purpose of creating a sound railroad industry, Congress intended to allow stable railroads to discontinue deficit services for which there is little demand so as to remain healthy.

* Both S. 3778, 85th Cong., 2d Sess., p. 6 and H. 12832, 85th Cong., 2d Sess., p. 9, as reported out of their committees required, as a condition to an order effecting reinstatement of a discontinued service, that "such operation or service will not result in a net loss therefrom to the carrier", in addition to the requirements of burden on interstate commerce and public convenience and necessity. This would have forbidden the Commission to order resumption of an unprofitable service.

A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce.

Although the bill which came out of the House Committee on Foreign and Interstate Commerce granted the Commission authority to permit discontinuances only of interstate trains, that Committee's report likewise reflects Congressional concern only for the particular deficit service, H. Rep. 1922, 85th Cong., 2d Sess., pp. 11-12:

A major cause of the worsening railroad situation is the unsatisfactory passenger situation. Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations.

* * * * *

However, since the bills were worded so that a discontinuance could be effected without prior permission from the Commission and an order of continuance would be prevented by showing only a "net loss," regardless of public convenience and necessity, this requirement was dropped. H. Rep. No. 2274, 85th Cong., 2d Sess., pp. 6, 41.

The bill which was accompanied by this report did not authorize the Commission to act with respect to intrastate train discontinuances. H. 12832, 85th Cong., 2d Sess., p. 10.

Where this passenger service * * * cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for.

If the rule engrafted by the lower court on Section 13a(2) were to endure, the Congressional purpose to free the railroads from deficit passenger services which siphon off the profits from other operations would be frustrated. Since in many cases the losses on an intrastate passenger operation are sufficiently offset by freight profits on the same line, the consequence of the lower court's rule would be the continued subsidizing of unprofitable passenger services for which there is little public need—the very situation that Congress proposed to alter.

The district court sought to justify its holding on the basis of the decisions in *Chicago M., St. P. & P. R. Co. v. Illinois*, 355 U.S. 300, and *Public Service Commission v. United States*, 356 U.S. 421, both of which antedated the Transportation Act of 1958. These cases arose under Section 13(4) of the Interstate Commerce Act, which authorizes the Commission to order an increase in intrastate rates which unjustly discriminate against interstate commerce,* and held that the Commission had erred in finding discrimination against interstate commerce without considering the overall, state-wide profitableness of the intrastate operations. The court below reasoned that Section 13a(2) cases “stand in an *a fortiori* relationship to

* The 1958 Transportation Act amended this section by adding the criterion “undue burden on” interstate commerce. See note 9, *infra*.

Section 13(4) cases" (App. A, *infra*, p. 27) since a Commission order of discontinuance is a more drastic infringement of the rights of States than merely ordering the raising of intrastate rates.

But the law has been changed since those cases were decided. As a direct response to these decisions, the Transportation Act of 1958 included an amendment to Section 13(4) which specifically eliminated the requirements imposed by the *Chicago and Public Service Commission* cases,* and thereby ratified the Commission's settled practice of determining the lawfulness of intrastate rates without allocating property, revenues, and expenses between interstate and intrastate operations. See *Utah Citizens Rate Assn. v. United States*, 192 F. Supp. 12, 19, n. 3, affirmed *per curiam*, 365 U.S. 649. The obvious effect of this

*The italicized words were added to Section 13(4) in 1958: "Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (*which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State*), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden."

amendment is to undermine the premise of the lower court's reasoning."

2. The court below also overstepped the limitations of judicial review and entered an area committed to the Commission's discretion.

a. Even assuming *arguendo* the correctness of its statutory interpretation, the court misconstrued its reviewing role in making the affirmative finding that the operation of trains 13 and 16 constituted no burden on interstate commerce. On its view of Section 13a (2), the court should have remanded the case to the Commission for further proceedings—especially since the court concluded that the "evidence in the record is not clear or full on the question of whether this segment of the line is contributing its fair share to the over-all company operations" (App. A, *infra*, p. 42).

Moreover, the court erred in applying its own rule. In determining that the Greensboro-Goldsboro line did contribute its fair share to total company operations, the court compared the average system-wide passenger loss per mile, and the average system-wide revenue per passenger mile with comparative averages on the Greensboro-Goldsboro line (App. A, *infra*, pp. 42-43). However, the court was unable to make any comparable calculations with respect to freight opera-

¹⁰ The lower court in the instant case argued that since Congress had inserted the parenthetical words in Section 13(4) but not in 13a(2), it intended that the rule of the *Public Service Commission* and *Chicago* cases should apply in establishing a burden on interstate commerce in intrastate discontinuance proceedings. However, the legislative history supports no such inference. Indeed, as we have seen, Congress emphasized the burden on interstate commerce of the particular deficit passenger service itself.

tions, as the court's approach would seem to demand, since there were not "comparative figures relating to freight profits in the record" (App. A, *infra*, p. 43). Because of this deficiency, the court was forced to base its ruling on the surmise that the "evidence points in the direction that the Greensboro-Goldsboro line contributes at least its fair share" (App. A, *infra*, p. 42).

In the absence of comparable figures showing the proportionate contribution made by the Greensboro-Goldsboro freight operations to the total company freight operations, the court apparently accepted as sufficient indication of a proportionate contribution a profit figure of \$630,000 from the Greensboro-Goldsboro line. That figure was based on the average system-wide freight profits per mile, multiplied by the number of miles between Greensboro and Goldsboro. Not only is this formula unreliable because it fails to consider comparability of conditions that affect costs;¹¹ it also fails to make a breakdown between interstate and intrastate freight revenues. In any event, such determinations are clearly not within the court's province; they are solely for the Commission. *Colorado v. United States*, 271 U.S. 153.

b. The court also held that the Commission's finding that the discontinuance was consistent with the present or future public convenience or necessity was not supported by substantial evidence of record (App.

¹¹ The \$630,000 figure does represent an adjustment of 61 percent for lesser density of freight traffic on the Greensboro line (App. A, *infra*, p. 43).

A, *infra*, pp. 44-45).¹² The court's duty in reviewing the substantiality of the evidence was merely to determine whether there was "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229. *Mississippi Valley Barge Line Co. v. United States*, 292 U.S. 282, 286-87. We believe that this standard was more than satisfied. Although we do not discuss the evidence in detail here, we point out that the Commission considered the relatively slight demand for the train services and the decline of patronage since 1948;¹³ the available alternative modes of transportation and their adequacy;¹⁴ the impact of passenger discontinuance upon industrial development in the area;¹⁵ and the meagre public opposition that was manifested at the hearings.

¹² The lower court did not set aside any of the subsidiary findings of fact made by the Commission; on the contrary, the court declared: "[t]he basic facts are not in conflict—nor is there any real conflict in the evidence offered by the parties" (App. A, *infra*, p. 44). Nor did the court find any deficiencies in the record (App. A, *infra*, p. 45).

¹³ In 1948 both trains carried over 56,000 passengers. In 1959, 1960 and the first five months of 1961 the trains carried 14,251, 14,776, and 8,934 respectively. The average number of passengers per train each day was 19.5, 20.2 and 29.6 for 1959, 1960 and the first five months of 1961, respectively (App. C, *infra*, pp. 67-68).

¹⁴ Passenger service by bus and rail is available for most of the major communities. Air passenger service is also available for some communities (App. C, *infra*, pp. 79-80). In addition there is a network of all-weather, paved highways (App. C, *infra*, pp. 70-71).

¹⁵ App. C, *infra*, p. 80.

CONCLUSION

This appeal presents questions of substantial importance in the administration of the Interstate Commerce Act and probable jurisdiction should be noted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LEE LOEVINGER,
Assistant Attorney General.

ROBERT B. HUMMEL,
I. DANIEL STEWART, Jr.,
Attorneys.

ROBERT W. GINNANE,
General Counsel,

H. NEIL GARSON,
Associate General Counsel,
Interstate Commerce Commission.

MARCH 1963.

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF NORTH CAROLINA, DURHAM DIVISION**

C-158-D-62

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE
DURHAM CHAMBER OF COMMERCE, INCORPORATED;
RESEARCH TRIANGLE INSTITUTE; ERWIN MILLS, INC.;
AND MARY TRENT SEMANS, PLAINTIFFS**

v.

**UNITED STATES OF AMERICA; INTERSTATE COMMERCE
COMMISSION; AND SOUTHERN RAILWAY COMPANY,
DEFENDANTS**

**Thomas Wade Bruton and Charles W. Barbee for
State of North Carolina; E. C. Bryson for Duke Uni-
versity; F. Gordon Battle and Victor S. Bryant for
Durham Chamber of Commerce and Research Tri-
angle; A. H. Graham, Jr. for Erwin Mills; and E. C.
Brooks, Jr. for Mary Trent Semans**

**H. Neil Garson and William H. Murdock, District
Attorney, for United States of America; H. Neil Gar-
son for Interstate Commerce Commission; and Joyner
and Howison, Major L. P. McLendon, James A. Bis-
line, and Earl E. Eisenhart, Jr. for Southern Rail-
way Company**

**Before BELL, Circuit Judge, and CRAVEN and PREY-
ER, District Judges.**

OPINION

L. RICHARDSON PREYER, District Judge

**This is an action brought under USC Title 28, Sec-
tion 1336, in accordance with USC Title 28, Sections**

1938, 2284 and 2321-2325. Its purpose is to set aside and enjoin enforcement of an order of the ICO granting Southern Railway Co. the right to discontinue all remaining passenger service between Greensboro, N.C., and Goldsboro, N.C. Acting under U.S.C. Title 49 Section 13a(2),¹ the Commission found that (1) the present or future public convenience and necessity permit such discontinuance, and (2) continuance of the operation would constitute an unjust and undue burden on interstate operations of the carrier and upon interstate commerce.

On July 18, 1959, Southern Railway Company filed a petition with the North Carolina Utilities Commission for discontinuance of its trains Nos. 13 and 16 which are the last passenger trains operating between Goldsboro and Greensboro, North Carolina. Actually,

¹ Section 13a(2) provides that:

"Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any state or where the state authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records, and facilities of the authorities in such State in the performance of its functions under this paragraph."

only one train is involved, it being designated No. 16 in one direction and No. 13 on the return trip.

Train No. 16 leaves Greensboro daily at 6:10 a.m., makes twelve regular stops and arrives in Goldsboro at 10:45 a.m. Its principal stops are Burlington, Durham, Raleigh, and Selma.

Train No. 13 leaves Goldsboro daily at 4:05 p.m. and arrives in Greensboro at 8:50 p.m. with similar stops along the route.

A sleeping car is attached to the train and by connection with other trains at Greensboro there is service to and from Washington, New York, and other major centers along the Eastern Seaboard.

These trains carry express but no freight or mail. The coaches have a capacity of 80 passengers. In addition, there is a 6 bedroom, ten-roomette sleeping car. There are six employees paid by the railroad servicing the train.

After hearings, the State Commission denied the application. Southern appealed to the North Carolina Superior Court, which affirmed the decision, and then to the Supreme Court of North Carolina which also affirmed. *Utilities Comm. v. R.R.*, 254 NC 73, 118 S.E. 2d 21 (1961).

On April 16, 1962, Southern filed a petition with the Interstate Commerce Commission under Section 13a(2) of the Interstate Commerce Act, again seeking authority to discontinue the trains. The State of North Carolina and the other protestants were allowed to intervene.

The entire records of the hearings before the North Carolina State Utilities Commission, the North Carolina Superior Court, and the North Carolina Supreme Court were made a part of the record for consideration by the Interstate Commerce Commission.

The proceedings were referred to an ICC Examiner who, after holding hearings, recommended that the discontinuance be allowed. On July 2, 1962, Division 3 of the ICC issued an Order adopting the findings and conclusions of the Examiner and authorizing the discontinuance of the trains. A petition for reconsideration was denied by the ICC. This action followed.

ISSUES DISMISSED

At the threshold of the case, plaintiffs raise certain legal questions which, if meritorious, would require dismissal of the ICC Order without reaching the substantive aspects of the case. Specifically, plaintiffs attack the constitutionality of section 13a(2); they claim a defect in the giving of notice of the discontinuance, as required by law; they contend that a lease from the North Carolina Railroad Corporation to the Southern Railway Company requires the continuance of these operations; and they claim that the decision of the North Carolina Supreme Court is res judicata on the issues, and that the ICC cannot make a contrary determination without a showing of changes in the surrounding circumstances that occurred after the North Carolina Supreme Court decision. We think all of these arguments are without merit.

Plaintiffs' attack on the constitutionality of section 13a(2) is without merit. The scope of the commerce power is such that there is little room for doubt of the constitutionality of an act allowing the ICC to eliminate intrastate operations that adversely affect interstate commerce. *Gibbons v. Ogden*, 9 Wheat (22 U.S.) 1, 16 L. Ed. 23 (1824); *Wickard v. Filburn*, 317 U.S. 111 (1942), 63 S. Ct. 82, 87 L. Ed. 122 (1942); *Wisc. R.R. Com. v. Chicago, Burlington and Quincy R.R. Co.*, 257 U.S. 563, (589-590), 42 S. Ct. 232, 66 L. Ed. 371 (1922); *Colorado v. U.S.*, 271 U.S. 153 (1926),

165-166), 46 S. Ct. 452, 70 L. Ed. 878 (1926). We find section 13a(2) constitutional.

As to plaintiffs' claim of a defect in notice, it is clear that the claim is based on an oversight by the ICC in failing to change a reference in 49 CFR 43.6 when 49 CFR 43.5 was amended and renumbered. Section 13a(2) merely requires that the ICC notify the Governor of the state in which the train is operating. No further notice is required under section 13a(2) or under the commission regulations. We find that all requirements pertaining to notice have been met.

Plaintiffs further allege that the discontinuance of the trains in question would constitute a breach of the Lease Agreement between the Southern Railway Company and the North Carolina Railroad Company, dated August 16, 1895, and, consequently, that it is unlawful for the ICC to authorize such discontinuance. But no obligation to require the Southern to operate passenger trains over the lines leased from the North Carolina Railroad can be unambiguously spelled out of the lease. Furthermore, this issue was not raised before the ICC, and it should not be raised here for the first time. *Carolina Scenic Coach Lines v. United States et al*, 56 Fed. Supp. 801 (803-804) (W.D. N.C. 1944); *Unemployment Comp. Com. v. Aragon*, 329 U.S. 143 (155), 67 S. Ct. 245, 91 L. Ed. 136 (1946); Davis, *Administrative Law Treatise*, Section 20.06. Besides, the paramount power of Congress to regulate interstate commerce forces even express charter or lease provisions to give way before it. This has been held many times and is no longer in question. *Colorado v. United States*, 271 U.S. 153 (165-166), 46 S. Ct. 452, 70 L. Ed. 878 (1926); *Texas v. United States*, 292 U.S. 522, 531, 54 S. Ct. 819, 78 L. Ed. 1402 (1934); *Moeller v. Interstate Commerce*

Commission, 201 F. Supp. 583 (S.D. Iowa, 1962); *Burke County, Georgia v. United States*, C.A. 1031 (S.D. Georgia, July 2, 1962, opinion not published).

Plaintiffs also seek to invoke the doctrine of res judicata to bar the ICC from considering the question of public convenience and necessity, alleging that this issue has been determined by the North Carolina Supreme Court in *State of North Carolina v. Southern Railway Company*, 254 N.C. 73, 118 S.E. 2d 21 (1961). This position cannot be sustained. Res judicata is a common law device to prevent litigation of matters already litigated between the same parties or those in privity with them. *United States v. California Bridge & C. Co.*, 245 U.S. 337 (341), 38 S. Ct. 91, 62 L. Ed. 332, (1917). It is clear that a statute may change this common law rule. The statute before us, section 13a(2), provides " * * * [W]here the State authority having jurisdiction thereof shall have denied an application * * * for authority to discontinue * * *, [the] carrier * * * may petition the [Interstate Commerce] Commission for authority * * * the Commission may grant such authority only after a full hearing and upon findings by it * * *." Since the statute requires the ICC to hold full hearings and to make findings, after a state decision, it seems quite clear that Congress did not intend for the state hearing to have res judicata effect. Cf. *Sprague v. Wall*, 7 Cir., 122 F. 2d 128 (1941); *NLRB v. Pacific*, 8 Cir., 228 F. 2d 170, 176 (1956). This interpretation is reinforced by the legislative history of section 13a(2) which shows that Congress was motivated by a belief that State authorities were unduly regressive in that they often required continuance of uneconomic and unnecessary service. (S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22, H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958), pp. 11-12). The conclusion

follows that Congress did not intend the ICC to give State determinations *res judicata* or collateral estoppel effect.

We proceed to the substantive issue in the case.

ISSUES INVOLVED

The central issue in the case is whether the order of the ICC authorizing discontinuance of the two trains is warranted in law and is supported by adequate findings based on substantial evidence of record.

Judicial review of an order of the ICC is limited. We may not set aside the ultimate findings of the Commission unless they are unsupported by substantial evidence on the record considered as a whole, involve error of law, or are arbitrary or capricious or constitute an abuse of discretion. Administrative Procedure Act, 5 U.S.C.A. § 1009(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 95 L. Ed. 456, 71 S. Ct. 456 (1950); *Carolina Scenic Coach Lines v. United States*, 56 F. Supp. 801, 804 (W.D. N.C. 1944), Aff'd 323 U.S. 678, 65 S. Ct. 277, 89 L. Ed. 550 (1944). It is not the function of this court to appraise the conflicting testimony or other evidence, to judge the credibility of witnesses and to determine the weight of the evidence. A court "cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, that has support in the record and the applicable law." *U.S. v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536, 66 S. Ct. 687, 90 L. Ed. 821 (1946). But the order must be reversed if the Commission in arriving at its determination departed from the applicable rules of law and if its finding was arbitrary and capricious and had no basis in substantial evidence on the record as a whole.

Plaintiffs contend that the conclusions of the Commission must fall because made under a mistake of law. Specifically, they argue that the Commission's conclusion that the continued operations would constitute "an unjust and undue burden upon the interstate operations of Southern Railroad and upon interstate commerce" was made without considering the over-all prosperity of the carrier and the total operations of the carrier on the line involved, and that in such failure lies error. We think plaintiffs' position is well-taken.

As a matter of law, we think that the ICC cannot be said to have made a proper finding unless it takes into account the profits that the Southern Railway makes in its freight operations on the same intrastate line. *Chicago, M. St. P. & P. R. Co. v. Illinois*, 355 U.S. 300, 78 S. Ct. 304, 2 E. Ed. 2d 292 (1958); *Public Service Com. of Utah v. United States*, 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886 (1958). Unless this is taken into account, the full weight of the burden placed upon interstate commerce by these intrastate operations cannot be determined. *Chicago* and *Utah* cases, *supra*. At the time of the decision of the Supreme Court in *Chicago, M. St. P. & P. R. Co. v. Illinois*, *supra*, Title 49 U.S.C. section 13(4) provided that the ICC could change intrastate railway rates where they discriminated against interstate commerce in favor of intrastate commerce. The Supreme Court in the *Chicago* case held that the true nature of the burden on interstate commerce caused by discriminatory rates could not be assessed unless the other revenues in that state were taken into account. As stated by the Supreme Court (P. 305): "the occasion for the exercise of the federal power asserted by section 13(4) is the necessity for effecting the required contribution by intrastate traffic of its proportionate

share of the revenues necessary to pay a carrier's operating costs and yield a fair return." In order to determine the burdens on interstate commerce caused by an intrastate loss, it is necessary to take into account intrastate profits. Cf. *North Carolina v. U.S.*, 325 U.S. 507, 65 S. Ct. 1260, 89 L. Ed. 1760 (1945).

If losses in an intrastate operation are so exceeded by profits of intrastate operation of the same general type in the same state, so as to pay operating expenses and yield a high profit, the net effect on interstate operations is not a burden on interstate commerce. If the ICC is then to cut off all of the intrastate operations that suffer a loss, while retaining all others, the result would be to require the intrastate operations to bear more than their share. The intent of Congress was to prevent burdens on interstate commerce, not require tribute therefor.

It must be remembered that the state has a legitimate interest in intrastate commerce—"intrastate rates are primarily the state's concern and federal power is dominant 'only so far as necessary to alter rates which injuriously affect interstate transportation.' *North Carolina v. U.S.*, supra, at 511 * * * [justification for the exercise of this exceptional federal power] must 'clearly appear'", *Chicago, M. St. P. & P. R. Co.*, supra. To find that segment of intrastate operations represents an ultimate "burden" upon interstate commerce without reference to the question of whether intrastate operations generally on the same line make it such a burden might permit the entire field of intrastate operations to be federally arrogated by a separate treatment of segments unrelated to the net total effects.

The *Chicago* and the *Utah* cases cited above are rate and revenue cases brought under section 13(4) rather

than discontinuance cases under section 13a(2). It is clear, however, that section 13(4) cases furnish analogous authority for section 13a(2) cases. The "unjust and undue burden" standard contained in section 13a(2) derives from section 13(4) of the Act and from judicial decisions relating to the power of the Commission to prescribe intrastate rates which impose an unjust or undue burden on interstate commerce. In section 13a(2) Congress also intended to prevent burdens on interstate commerce by intrastate operations that do not bear their full share of costs and profit. S. Rep. No. 1647, 85th Cong., 2d Sess. (1958), pp. 21-22; H.R. Rep. No. 1922, 85th Cong., 2d Sess. (1958), pp. 11-12. Indeed, section 13a(2) cases stand in an a fortiori relationship to section 13(4) cases. For to allow passenger service to be abandoned, in this case altogether, as contrasted to raising passenger fares, involves a far more serious incursion upon the traditional rights of the states. See *Southern Railroad Co. v. South Carolina Public Service Company*, et al, 31 F. Supp. 707, 710 (E.D. S.C. 1940):

But defendants contend that the authority of the *Chicago* and *Utah* cases cited above has been vitiated by the amendment to section 13(4), 75 Stat. 570, Pub. L. 85-625, section 4, an amendment which was keyed directly to these cases. The amendment was enacted on August 12, 1958; *Chicago* was handed down in January of 1958 and *Utah* in May of 1958. Section 13(4) was amended to allow the ICC to make a determination that intrastate railway rates discriminated against interstate commerce "without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the oper-

ations or results thereof of any carrier . . . wholly within any state.”²

In our opinion, the amendment to section 13(4) does not overturn the existing law applicable to discontinuance cases. Section 13a(2) was enacted at the same time that section 13(4) was amended. At that time, the purpose of amending section 13(4) was fresh in the minds of Congress. If Congress had decided not to require the ICC to take into account the net result of the total operations of the intrastate lines in discontinuance cases as well as rate and revenue cases, it would have been easy to have amended proposed section 13a(2) just as section 13(4) was amended. This was not done.³

² Section 13(4) was amended by the addition of the underlined portions:

“Section 13, par. (4) **Duty of Commission where State regulations result in discrimination.** Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice caused any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or *undue burden on*, interstate or foreign commerce (*which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier or group or groups of carriers wholly within any State*), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or *burden*”

³ It has been argued that since Congress amended section 13(4) to add the words “undue burden”, and at the same time enacted section 13a(2) using the words “undue burden”, Congress intended that the new provisions of section 13(4) were

In any event, all that the major addition to section 13(4) does is to provide that the ICC "may * * * make their determination without a separation of interstate and intrastate property, revenues and expenses, and without considering in totality the operation or results thereof of any carrier * * * wholly within any state." This seems to mean that the Commission may decide without having to look into the above matter. However, where, as in this case, the matter was presented to the ICC, it would not seem likely that Congress intended the ICC to ignore these factors. The new provision indicates that the ICC may make a decision under section 13(4) without considering the totality of intrastate operations when the facts as to totality of intrastate operations have not been presented to the Commission by the parties. However, where they are presented, they should be taken into account. The permissive phraseology of the section would appear to us to mean that a decision of the Commission will not be upset simply because it fails to find specifically these facts where they have not been put in issue by the evidence before the Commission, but this does not mean that such facts where relevant and pertinent are not to be considered.

to be applied to section 13a(2). In other words, the argument is that the new addition to section 13(4) became a definition of "undue burden". However, it would appear more likely that the major amendment to section 13(4) was a grant of additional power to the ICC in applying section 13(4), rather than a new definition of "undue burden."

Another possible interpretation of the amendment is that it allows the ICC to make a change in rates without considering the overall statewide totality of a carrier's results—i.e., without considering *all* rates within a state—but does not mean that the totality of operations on the particular line in question should not be considered. See Conf. Report, Administrative News, 85th Cong., 2d Sess., at pp. 3484-5:

"The amendment (to section 13(4)) deals only with the na-

This interpretation of the amendment to section 13(4) is the one adopted by the courts. In *Utah Citizens Rate Association v. United States*, 192 F. Supp. 12 (D. Utah 1961), the three judge court stated at p. 18 that "We believe that a matter of procedure rather than any substantive change in the basic transportation policy of the Congress is involved [in the amendment.] If this were not so, serious conceptual and constitutional, and further practical difficulties, would be invited * * *. The legislative history of the amendment bolsters this view." *Utah* was affirmed per curiam in 365 U.S. 649, 81 S. Ct. 834, 5 L. Ed. 2d 857 (1961).

ture of the evidence to support such a finding. By two recent decisions of the Supreme Court (*Chicago, Milwaukee, St. Paul and Pacific Railroad Co. v. State of Illinois* (January 13, 1958), 355 U.S. 300, 356 U.S. 906, 78 S. Ct. 304, 665, and *Public Service Commission of Utah v. United States* (May 19, 1958), 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 2d 886), the Commission is required to consider the entire State operation, freight and passenger, in determining whether or not the intrastate freight rates were causing an undue revenue discrimination against interstate commerce. If the holdings in these cases mean that the required finding—of undue, unreasonable, or unjust discrimination against or undue burden on, interstate or foreign commerce—can be made only in the light of the overall statewide totality of a carrier's operating results derived from its entire body of rates applicable within the State, it would preclude the Commission from making such a finding on a showing of only the effect of the particular rate or rates in question. The Commission could not, under such an interpretation, continue to function effectively in removing unjust discrimination against interstate commerce caused by interstate rates and charges * * *. The above three amendments to paragraph (4) of section 13 do not vest the Commission with jurisdiction that it does not have today but deal with procedures in the exercise of that jurisdiction better to strengthen the protection of interstate commerce as designed in this provision of the act."

It would, therefore, appear that when making a determination under section 13a(2) to discontinue one type of service on a line, where such facts are pertinent and relevant, and especially when such facts are before the Commission, the ICC must take into account the revenues from all services on the line. Without taking this into account, an interference of this nature into the completely intrastate affairs of any state based upon the burden that state has placed upon interstate commerce cannot be supported.

Both the Trial Examiner's Report and the decision of the ICC below indicate that they did not take this factor into account. The following appears at pages 11 and 12 of the Examiner's Report:

"At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,699, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the examiner disagrees."

On appeal, Division 3 of the ICC followed the Examiner's position (at pp. 4, 5):

"But, interveners argue, petitioner's net income from freight traffic over the line is such that overall profitable operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in an

unconstitutional application of the provisions of the statute. In short, interveners allege that petitioner's net income from its freight operations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the intent of Congress under the statute here involved. By analogy, interveners' view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act."

The ICC then states the rule to be as follows (p. 5):^a

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operations of an individual intrastate train imposed an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

The examiner and the ICC have misconstrued the intent of Congress and the contentions of the plaintiffs, as well as the applicable law. It is a non-sequitur to say that "by analogy, interveners' plaintiffs view would require a determination that overall losses have resulted on traffic handled over the line." Plaintiffs do not contend—and it is not the law—that there can be no discontinuance unless freight and

^a Quoting from *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 ICC 631.

passenger service considered together show a net loss. Rather, plaintiffs' contention is that the \$630,000 freight profit is a factor to be considered in determining whether the \$90,000 passenger loss on the same line constitutes an unjust and undue burden on interstate commerce. Whether there is a net profit or net loss is not necessarily the controlling factor, but the amount of the net profit or net loss is a factor to be considered. Whether the operation of the passenger service is a burden on interstate commerce and whether there is any longer a public need sufficient to justify the financial losses involved are questions not susceptible of scientific measurement or exact formulae but are questions of degree and involve the balancing of conflicting interests. All material factors bearing on the questions must be taken into account, the ICC must consider a fair picture.* Because Congress has

* See *Colorado v. United States*, 271 U.S. 153, 168-9, 70 L. Ed. 878, 885, (Brandeis, J): "In many cases, it is clear that the extent of the whole traffic, the degree of dependence of the communities directly affected upon the particular means of transportation, and other attendant conditions, are such that the carrier may not justly be required to continue to bear the financial loss necessarily entailed by operation. In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier. The problem and the process are substantially the same in these cases as where the conflict is between the needs of intrastate and of interstate commerce. Whatever the precise nature of balancing of the respective interests—the effort being to decide what fairness to all concerned demands. In that balancing the fact of demonstrated prejudice to interstate commerce and the absence of earnings adequate to afford reasonable compensation are, of course, relevant and may often be controlling. But the act does not make issuance of the certificate dependent upon a specific finding to that effect."

expressed concern over the financial conditions of railway passenger service does not justify a reading of their intent to mean that if a segment of passenger service shows a loss, it is unnecessary to consider all other relevant factors, including the freight profits on the same line, to determine whether the loss constitutes a burden on interstate commerce.⁷

We hold, then, that the Commission should have considered the relative amount of profit on one service and loss on the other in making its finding of whether the passenger service here involved constituted an undue burden on interstate commerce.

SUBSTANTIAL EVIDENCE ON THE RECORD

In order to allow discontinuance under section 13a (2) the Commission must find, based on substantial evidence on the record as a whole, that (a) the present or future public convenience and necessity permit of such discontinuance, and (b) the continued operation or service without discontinuance in whole or in part, will constitute an unjust and undue burden upon the interstate operation of such carrier or upon interstate commerce. Title 49 USC, section 13a(2).

The use of the words "undue" and "unjust" must mean that there are permissible burdens, that is, "due" and "just" burdens. There is an interrelation between findings (a) and (b). To make a determination, the Commission must weigh the public convenience and necessity against the burdens.

What then is the public convenience and necessity to be served by this railroad.

⁷ All relevant factors are considered in fixing freight rates. Southern has received six increases in freight rates since 1951, in all of which the size of passenger deficits were taken into account. ICC Record, Vol. 11, pp. 197-200.

The record discloses that the two trains in question are the last remaining east-west passenger trains between Goldsboro and Greensboro, North Carolina. Until September 1954 Southern operated three pairs of passenger trains on this line. One pair of trains was discontinued in 1954 and another pair in 1958 which reduced the passenger service to trains Nos. 13 and 16 which are involved in this proceeding. The principal public convenience presently afforded by these trains arises from the inter-connecting service at Greensboro with north-south trains on Southern's main line. The pullman service furnishes convenient overnight travel to New York and other East Coast cities, allowing a full working day to the traveler and thus conserving work time. A number of witnesses pointed out the superior convenience of this service to travel by air.

The City of Durham has the largest natural interest in the use of the trains, 46% of the passengers embarking or leaving the trains there. This city has a population of 78,302. A witness for the railroad could recall only five cities in the United States with a population in excess of 70,000 that are without rail passenger service. The discontinuance of these trains would leave Durham County (1960 population 111,995), Alamance County (1960 population 85,674), and Orange County (1960 population 42,970) without any rail passenger service.* These three counties with a total population of 240,639 are located in the industrial Piedmont section of North Carolina.

The witnesses who testified at the hearings as to the need of these trains included:

* Fifty of North Carolina's 100 counties are without passenger rail service. Durham County is $\frac{1}{3}$ larger in population than the largest county without such service. Record before North Carolina Supreme Court, p. 259.

1. Four members of the U.S. Army assigned to the Office of Ordnance Research located at Duke University who testified that the continuation of the trains was necessary for the satisfactory performance of their duties (relating to anti-missile missile work). Their individual annual use of the train was fifteen to twenty trips a year.

2. Two students at Duke University testified as to their and other students' use and need of the trains.

3. Professors from Duke University and the University of North Carolina who testified as to the need of the trains in carrying on their duties.

4. Patients at Duke Hospital who testified as to the medical necessity of the trains in getting to and from their home in New York to the hospital.

5. Testimony of a research chemist from Philadelphia, Pennsylvania, as to his use and need for the transportation.

6. A textile executive from New York City whose company owns a mill in Durham testified as to his necessity for the use of the trains.

7. The Director of Transportation for Burlington Industries, Inc., Burlington, North Carolina, testified as to the need for the trains both for employees of the company and for buyers, suppliers and technical people visiting the plants of the company.*

8. The President of the Research Triangle Institute, a recently established nonprofit or-

* 30-40 employees of Burlington Industries are "regular" users, averaging approximately one trip a month each. Customers and buyers (especially women buyers) also use the train. Burlington Industries has assisted Southern in the removal of other schedules and originally did not protest the discontinuance involved here. Subsequent studies of the company needs caused Burlington to reverse its position. ICG Record, Vol. 111, pp. 374-6.

ganization providing research service to corporations, governmental agencies and foundations, testified as to the use and need of the trains by his staff, and that the continued operation of the trains was extremely important to the proper functions of his organization. The Institute staff consists of 86 full time members today; it is anticipated that this figure will be 170 by the end of 1962.

9. The President of the Golden Belt Manufacturing Company of Durham testified as to his use and need of the train. This witness explained the necessity for train travel in the operation of his business.

10. The president of the Burlington Chamber of Commerce testified that rail passenger service was instrumental in the growth of Burlington and that the discontinuance of trains would seriously handicap the area.

11. A Burlington Executive testified as to the need for the trains by himself, his buyers, and his customers.

12. The Dean of Trinity College of Duke University, who made twenty to twenty-five trips a year himself, testified as to the need and convenience of the trains.

13. The Secretary of the Committee on Educational Institutions of the Duke Endowment testified that his work required use of these trains.

14. A Professor of Physics and a Member of the Advisory Committee of Reactor Safeguards, a part of the Atomic Energy Commission, testified that his work required the use of the trains at an average rate of a trip per month.

15. The President of Duke University testified to his use of the trains and that of his trustees and that their continuance was a matter of convenience and necessity. (He had made five trips to New York since the first of the year.)

16. The General Manager of the Jack Tar Hotel in Durham testified that the continued operations of the trains serve a necessary and convenient purpose for the guests who stay at his hotel and that the removal of the trains would not only be detrimental to efforts to attract conventions to Durham, but would inconvenience those persons attending such conventions.

17. The Director of Durham's Committee of 100 testified as to the need of the trains in locating and retaining industry in the Durham area.

18. The President of the Southerland Dye and Finishing Plant in Mebane, North Carolina, testified as to his use of the trains and their need in his area.

19. The Office Manager of the Belk Leggett Department Store in Durham testified as to his store's need of the trains for sending buyers to New York. The buyers consist of a group of four to six people going to New York once a month, ten months out of the year.

20. There was evidence of the need of the service in the industrial development of the area from Justin Kingston, a New York textile executive, now building a plant in Durham to employ two hundred to three hundred employees; from the Director of Transportation for Burlington Industries; from George Watts Hill, Chairman of the Board of the Home Security Life Insurance Company and of the Durham Bank and Trust Company, and numerous others. In addition, one witness, Dr. Thomas Powell, a man with an investment of a million dollars in the biological supply business in Elon, North Carolina, testified that the loss of rail passenger service might cause that business to leave North Carolina.

21. Evidence indicated that there are three universities in or near Durham, two in Dur-

ham, one in Chapel Hill in Orange County). A total of 14,737 students attended these institutions in 1958-9 and attendance is steadily increasing. There are eight hospitals located in or near Durham. Six are within ten minutes by ambulance or auto from the Durham railroad passenger service. The other two, Butner and Memorial Hospital are within twenty to twenty-five minutes. These hospitals treated a total of over 431,000 patients in 1959.

To summarize, in addition to the need for the services by the general public, the testimony indicated the need existed as to four principal areas: industry, hospitals, Duke University, and the U.S. Army.

The record indicates that the trains serve a growing area. The Durham-Burlington area is already heavily industrialized, with Burlington Mills and Western Electric predominating in Burlington, and the cigarette industry in Durham. In addition, in the opinion of Southern's General Industrial Agent "this area holds great promise in the field of industrial development * * * the new Research Triangle will give tremendous impetus to this growth and create ever-increasing industrial interest in this section." (Southern's freight traffic on the Greensboro-Goldsboro line may be expected to benefit accordingly.)

That this is a growing area would be meaningless if the growth was not reflected in increasing use of the trains. Southern points to a very large decline in passengers from the year 1948 (an average of 77.51 per trip) to 1960 (an average of 20.2 per trip). This decline would seem to reflect the general revolution in transportation caused by the shift in travel from rail-ways to air, bus, and private car. This decline appears to have bottomed out, however, and recent

figures indicate that the use of the trains is increasing with the growth of the area:

PASSENGERS¹

	1959	1960	1961 (5 months)
Total.....	14,251	14,778	8,684
Daily average.....	19.5	39.2	29.6
Average passenger mile per train mile ²	6.82	7.23	9.97

¹ These figures do not include any pass riders, which were estimated at the hearing before the State Utilities Commission at 8% of the total passengers.

² The evidence does not disclose the average number of passengers per train mile on the 55 mile portion of the line between Greensboro and Durham, although the principal public convenience presently afforded by trains Nos. 13 and 16 related to travel between these two cities. The line between Greensboro and Goldsboro is 139 miles long.

We note that the statute refers to "the present or future public convenience and necessity."

The increase in use may not be substantial (although it represents an increase of nearly 60% in the daily average number of passengers patronizing these trains in the first five months of 1961 as compared with the entire year of 1959), but must be viewed in the light of Southern's failure to seek passengers. Plaintiffs accuse Southern of making a deliberate effort to discourage passenger service on the trains. Be that as it may, there is considerable evidence that Southern has done little, if anything, to promote greater use of these trains. The last advertising for the service before the commencement of these hearings occurred in 1951;¹⁰ the president of the Research Triangle Institute testified that his associates did not know of the service until he told them. In contrast, there was testimony that Seaboard, with reference to its Raleigh service, actively advertised and solicited patronage and operated a well-staffed passenger office.

¹⁰ Six advertisements appeared in the Durham paper in 1960. ICC Record, Vol. 111, pp. 308, 335. The hearing before the North Carolina Public Utilities Commission was on Oct. 6, 1959, and the decision was handed down on January 20, 1960.

The ICC emphasized the availability of other means of travel to serve this area. There is good bus and air service, and the number of private automobiles is larger than the state-wide average. The fact of other methods of travel is a factor to be considered but it is not decisive. The statute speaks of convenience as well as of necessity. Also, the existence of *alternative* modes of travel in a heavily populated area should be considered a "convenience", and under some circumstances (such as air line strikes and bad weather) a "necessity."

What are the burdens imposed on interstate commerce by the operation of the trains?

The ICC found that the carrier's annual out-of-pocket savings resulting from the discontinuance of the two trains would exceed \$90,000 each year." On this same line of track the railroad made a net freight operating profit of \$630,000 in 1960.

Taking into account total operation of this line, there is a profit not a loss, a benefit, not a burden.

"Plaintiffs contended that the maximum out-of-pocket loss was only \$33,688 in 1960, while Southern contended it would exceed \$117,640. The difference is largely accounted for by plaintiffs' giving effect to the 58 percent state and federal income tax deduction resulting from the deficit operation, on the ground that this is a cost borne by the state and national governments and thus would not affect the financial condition of the railroad itself and therefore could not affect interstate commerce by weakening the railroad's capital structure. But uneconomical transportation is not rendered less so by passing a portion of the burden to Federal and State governments in the form of reduced income taxes " * * * an uneconomic outlay of funds would not be in the interest of transportation even though the money be derived from the national government." *Purcell v. United States*, 315 U.S. 381, 385 (1942). As far as the effect of the deficit operation on the shareholders and the financial structure of Southern is concerned, however, the argument carries weight.

The relative amount of profit on one service and loss on the other is a factor.

When we turn from this particular line to the over-all operations of Southern Railway, we find that the over-all profit of Southern Railway in 1960 for its entire system was \$30,702,542 after the payment of all taxes and all operating expenses. The figure for 1958 was \$30,254,231 and for 1959 was \$33,126,744.¹² The accumulated surplus of Southern in 1960 was \$343,594,070. The effect of the losses of the Greensboro-Goldsboro passenger service on the financial structure of the railroad is inconsequential.¹³ The degree by which the loss impairs the ability of the carrier properly to serve interstate commerce is not substantial.

But it is unfair to compare the loss from a particular segment of a passenger rail line to the total profit of the company. Nor is this the test. The question is whether the particular segment of the railway involved is contributing its fair share to the over-all company operations, or whether its share constitutes a burden on the company and on interstate commerce. The evidence in the record is not clear or full on the question of whether this segment of the line is contributing its fair share to the over-all company operations, but the evidence points in the direction that the Greensboro-Goldsboro line contributes at least its fair share. For example, Southern's over-all passenger deficit in 1960 was \$14,669,798 on its 2,913 passenger miles. The average loss per mile is then \$5,035 on a system-wide basis. If we assume Southern's net operating passenger deficit on the Greensboro-Goldsboro line was \$117,641 for 1960 (on a line of 130 miles);

¹² ICC Record, Vol. 11, p. 202.

¹³ As to its effect on shareholders, the loss in 1960 reduced net profits by .0018% (after giving effect to state and federal income tax deductions).

then the average loss per mile was \$912." The evidence further indicates that the average revenue per passenger mile in 1960 was .0305 for trains Nos. 13 and 16, as compared with a company wide average of .0296 and a North Carolina average of .0301, indicating a greater revenue per passenger mile on the Greensboro-Goldsboro line than on the Southern's operations as a whole."

We find no comparative figures relating to freight profits in the record. The amount of the freight profits on the Greensboro-Goldsboro line was apparently arrived at by taking 61% of the Southern Railway's average freight profits per mile multiplied by the total Greensboro-Goldsboro mileage.

The burdens of a public utility must be viewed in light of the principle that a public utility cannot shut off all unprofitable service—it must continue to serve, even at a loss as to some operations when the public convenience and necessity do not permit the loss of the service. Mr. Justice Frankfurter, in *Ala. Public Serv. Com. v. Southern Ry. Co.*, 341 U.S. 341, 71 S. Ct. 762, 95 L. Ed. 1002 puts it:

"Unlike a department store or grocery store, a railroad cannot of its own free will discontinue a particular service to the public because an item of its business has become unprofitable * * *. One of the duties of a railroad doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of

¹⁴ This figure is only approximate. Mr. Gleason testified that the \$14,669,798 included all losses while the \$117,641 was only the out of pocket losses resulting solely from the trains' operations. ICC Record, Vol. 11, pp. 209-211.

¹⁵ For the first five months of 1961, the Greensboro-Goldsboro figures had fallen to .0274 compared to a company average of .0300. We find no figures for other years. ICC Record, Vol. 11, pp. 164-5.

the acceptance and enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided because it will be attended by some pecuniary loss."

Upon our examination of the entire record, in the light of the applicable principles of law, we fail to find substantial evidential facts to support the Commission's holding that the service in question constitutes an undue burden on the interstate aspects of the carrier's operations. The basic facts are not in conflict—nor is there any real conflict in the evidence offered by the parties. The question is whether there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229, 59 S. Ct. 205, 217, 83 L. Ed. 126 (1933); Davis, *Administrative Law Treatise*, Vol. 4, p. 186. We think there is not.

This court is specifically authorized by the Administrative Procedure Act (5 U.S.C.A. 1009) to "hold unlawful and set aside agency action findings and conclusions found to be arbitrary, capricious * * * or otherwise not in accordance with law * * * (or) unsupported by substantial evidence." By the provisions of Title 28, sec. 1336, jurisdiction is accorded to "set aside (or) annul any order of the Interstate Commerce Commission."

Pursuant to this authority, we hold unlawful and set aside the action of the Interstate Commerce Commission authorizing the carrier to abandon its passenger service. We also hold unlawful and set aside the ultimate conclusions of the Interstate Commerce Commission that the service in question constitutes an undue burden on interstate commerce and that the

present or future public convenience and necessity permits such discontinuance. We hold that such action and conclusions are arbitrary and capricious because not in accordance with law and because not supported by substantial evidence.

We do not invalidate and do not set aside any of the subsidiary findings of fact made by the agency. Since we accord to them administrative finality, and since the record is complete bearing upon all aspects of the controversy, there would appear to be no occasion for remand. The procedure of remanding to an administrative agency is to afford the agency an opportunity to meet objections to its order by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings, or supplying findings validly made to take the place of those invalidated.¹⁶ None of these purposes would be served by remanding this case to the Interstate Commerce Commission for the simple reason that we have noted no irregularities in procedure and no important deficiencies in the record, and for the additional reason that we have invalidated no subsidiary findings of fact but only ultimate conclusions of law and agency action.

Judgment for Plaintiffs.

U.S. Circuit Judge

U.S. District Judge

U.S. District Judge

OCTOBER —, 1962.

¹⁶ 2 Am. Jur. 2d, "Administrative Law", sec. 764.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF NORTH CAROLINA, DURHAM DIVISION

C-158-D-62

STATE OF NORTH CAROLINA, ET AL.

v.

SOUTHERN RAILWAY COMPANY, ET AL.

ORDER

The above entitled cause coming on to be heard on the 13th day of September, 1962, and all parties thereto having appeared by counsel, and the court having heard the arguments of counsel and having reviewed the record, and upon due consideration thereof it appearing to the court that the plaintiffs should be granted the relief prayed for in their complaint, it is therefore on this the 19th day of October, 1962,

Ordered, Adjudged and Decreed that the Order of the Interstate Commerce Commission be set aside and that the defendant, Southern Railway Company, its officers, agents and employees, be permanently and perpetually enjoined and restrained from discontinuing passenger trains, nos. 13 and 16 between Greensboro and Goldsboro, North Carolina.

The defendant, Southern Railway Company has until 12:00 noon, 24th day of October, 1962, in which to comply with this order.

It is further Ordered, Adjudged and Decreed that the defendant, Southern Railway Company, pay the costs of these proceedings to be taxed by the Clerk of this court.

U.S. Circuit Judge

U.S. District Judge

U.S. District Judge

OCTOBER 19, 1962.

APPENDIX B

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21563

Service Date July 2, 1962

**SOUTHERN RAILWAY COMPANY DISCONTINUANCE OF
SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N.C.**

Decided June 27, 1962

Order issued granting petition of Southern Railway Company to discontinue the operation of trains 13 and 16 between Greensboro and Goldsboro, N.C.

Arthur J. Dixon and Earl E. Eisenhart for Southern Railway Company.

F. Kent Burns for State of North Carolina and North Carolina Utilities Commission.

Robert B. Holton, W. J. Burton, Jr., and R. L. Carnes for railway labor organizations, protestants.

Claude V. Jones, Victor S. Bryant, E. C. Bryson, E. C. Brooks, Jr., A. H. Graham, Jr., and Francis E. Walker for other protestants.

REPORT OF THE COMMISSION

Division 3, Commissioners **TUGGLE, HUTCHINSON AND GOFF**

Goff, Commissioner:

Exceptions to the report of the hearing examiner recommending the granting of the petition have been filed jointly by the State of North Carolina, the North

Carolina Utilities Commission, Duke University, Mrs. Mary Trent Seamans, Research Triangle Institute, and Erwin Mills, Inc., all interveners in opposition. Petitioner, Southern Railway Company has replied thereto. Oral argument requested by the interveners was denied by order of the Commission, Commissioner Tuggle dated February 12, 1962, served February 16, 1962.

By petition filed April 6, 1961, the Southern Railway Company, herein called petitioner or the carrier, a common carrier by railroad subject to Part I of the Interstate Commerce Act, requests authority under section 13a(2) of the act to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N.C. A hearing was held in Raleigh, N.C., of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. Briefs were filed and a report and recommended order by the hearing examiner was served on October 27, 1961. We are in accord with the examiner's findings of fact and ultimate conclusions thereon which we hereby adopt as our own and will not restate herein except to the extent necessary for clarity of discussion. However, we believe that we should set forth our views on certain of the issues presented.

Prior to the filing of the petition with this Commission, the carrier on July 8, 1959, filed an application with the North Carolina Utilities Commission for authority to discontinue the operation of the same trains in question here. After hearing, the North Carolina Commission concluded that there was insufficient competent evidence in the record upon which to base a finding that public convenience and necessity for the continuance of the trains no longer exists and thereupon issued its order of January 20, 1960,

denying the application. On appeal, a judgment of the Superior Court of Wake County, N.C., sustaining the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al. v. Southern Railway Company*, 254 N.C. 73.

With this history of adjudication of the State proceeding in support of their argument, interveners at the hearing on the petition before us moved for dismissal asserting that the action is *res judicata*. The examiner has recommended that the motion be overruled and interveners on exceptions, contend error, reasoning that the issue of public convenience and necessity had been clearly litigated between the parties in the prior proceeding and was finally determined by a court of competent jurisdiction when the Supreme Court of North Carolina issued its decision on February 3, 1961, affirming the findings of the Superior Court.

We certainly do not question either the competency or jurisdiction of the North Carolina Utilities Commission or the Supreme Court of that State in the prior proceeding and respect their decision in that matter. We also recognize the finality of the Court's decision on questions within its judicial sphere. However, the issue before us on petition by Southern is whether public convenience and necessity permits the discontinuance of operation of the trains in interstate commerce, a question arising under a Federal Statute (section 13a(2) of the Interstate Commerce Act). Proceedings of this nature are not dissimilar to abandonment proceedings presented before us. Of the latter cases, Justice Brandeis, speaking for the United States Supreme Court in *State of Colorado v. United States* 271 U.S. 153, 165-166 said:

Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment of the particular case. The authority to find the acts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission.

It follows that the question of public convenience and necessity as it affects interstate commerce and which is presently before us was not determined in the prior State proceeding and the doctrine of *res judicata* obviously is not applicable to the newly created legal situation. Accordingly, the motion is denied.

Intervenors allege further error by the examiner in recommending that 2 other motions to dismiss the petition be overruled, namely (1) that section 13a(2) of the Act is unconstitutional on its face and in its application; and (2) that petitioner failed to meet the applicable regulations regarding proper notice to the public.

As the examiner has pointed out, it is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon to administer. See *Engineers Public Service Co. v. SEC*, 78 U.S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot 332, U.S. 788; *Paintz v. District of Columbia*, 72 App. D.C. 131, 112 F. 23, 39; *Todd v. SEC*, 137 F. 2d 475, 478

(6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.), certiorari denied 332 U.S. 765; and *Public Utilities Commission v. United States*, 355 U.S. 534, 539. But, interveners argue, petitioner's net income from freight traffic over the line is such that overall profitable operations result therefrom. It is their contention therefore, that the operation between Greensboro and Goldsboro cannot be held to be a burden upon interstate commerce. Their conclusion is that any application of section 13a(2) to a situation where an overall profitable operation is held to be a burden on interstate commerce results in an unconstitutional application of the provisions of the statute. In short, interveners allege that petitioner's net income from its freight operations over the line must be given affect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce. We think that such premise is contrary to the intent of Congress under the statute here involved. By analogy, interveners' view would require a determination that overall losses have resulted on traffic handled over the line. In that instance, however, petitioner could obtain adequate relief under the abandonment provisions of section 1(18) of the Act. Section 13a(2) specifically empowers the Commission to authorize the discontinuance of trains upon finding that (a) the present and future public convenience and necessity permit of such discontinuance or change in whole or in part of the operation or service of *such train or ferry*, and (b) the continued operation or service of *such train or ferry* without discontinuance or change, in whole or part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. [Underscoring supplied.]

The legislative history of section 13a(2) indicates that the purpose thereof is to permit the discontinuance of the operation of services that "no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). [Emphasis supplied.] In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc.*, 312 I.C.C. 631, we stated:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

Nothing has been submitted herein to warrant a change in this view.

Nor can we agree with interveners that the petition in this proceeding should be dismissed for petitioner's failure to observe the rule included in our order of November 12, 1959, requiring the posting of notice of the proposed discontinuance in each station, depot or other facility involved. While the statute clearly requires such posting of notice in proceedings instituted under section 13a(2), the statute is equally clear in not providing for such requirement under paragraph 2:

"When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least 30 days in advance of the hearing provided for in this paragraph, and such hearing

shall be held by the Commission in the State in which such train or ferry is operated; * * *."

It is further apparent that the inclusion of the requirement regarding the posting of notice in our order of November 12, 1959, and the resultant conflict between that order and section 13a(2) was caused by an obvious error in not amending section 43.6 to conform to the relettering of section 43.5 of our order¹ of the above date. Since petitioner complied with the rules and regulations promulgated by our order of August 14, 1958, and since there was no intent that our subsequent amending order of November 12, 1959, impose an additional requirement regarding notice upon petitioners in proceedings under section 13a(2), and since no specific evidence has been introduced to show that the position of any of the parties has been prejudiced or materially affected by our error, the motion of interveners is denied.

Interveners' exceptions include other assignments of error to the examiner (1) in computing the revenues and expenses of operation of the trains involved, (2) in failing to give sufficient weight to the overall prosperity of the petitioner when considering whether continuance of the operation would constitute an undue burden on interstate commerce, (3) in failing to consider the increase in the average number of patrons in 1960 and the period of 1961 over the number of passengers utilizing the service in 1959, (4) in failing to recognize that petitioner had allowed service along and over the line to decline in order to present a plausible case for the abandonment of passenger service, and (5) in concluding that future industrial expansion of

¹ This oversight was corrected by the issuance of the Commission's order of November 28, 1961 (Ex Parte No. 217) in which section 43.6 was amended to eliminate reference to paragraph (j) of section 43.5.

the area is not dependent upon existing rail passenger service.

In his determination of the financial results of operation the examiner has allowed or disallowed certain items of expense consistent with our prior decisions in similar discontinuance proceedings. Interveners have assailed the methods utilized in approximating certain cost items where the actual expense cannot be determined. However, they have offered no substitute formula whereby a more accurate determination may be made. Under the circumstances we will rely on the methods which have been acceptable to us in the past.

The contention that the overall prosperity of the petitioners must be given effect in the disposition of the issues involved herein has been adequately discussed in our consideration of one of interveners' motions and no further clarification of our position in that matter is necessary.

The fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961. The record also discloses that the increase in the 1961 period was due largely to an increased number of group movements of school children. However, despite the increase in patronage during the first 5 months of 1961, passenger revenues during that period amounted to only \$10,653 or approximately \$26,000 less than train and engine crew wages.

The evidence of record fails to support interveners' contention that petitioner has deliberately discouraged the use of the trains as a part of its plan to present a plausible case for discontinuing passenger service over the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment and, as stated by

the examiner; we have repeatedly held that prospective patrons who must be coaxed to use a service have no urgent need for it.

We have also expressed the view that while industrial expansion may, under certain circumstances, depend upon the existence of rail passenger service, it would appear that prospective industries are much more interested in freight service than rail passenger facilities. See *Chicago, M. St. P. & P. R. Co. Discontinuance of Service*, 307 I.C.C. 565, 578 and *Chicago & N. W. Ry. Co. Discontinuance of Service*, 307 I.C.C. 775, 782.

From a review of the evidence of record we conclude that the cost to the carrier of operating the trains involved greatly exceeds the benefit derived from said trains by the traveling public; that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express; that the public will not be materially inconvenienced by the discontinuance of the service here involved; that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce.

We have heretofore concluded that we have no authority under section 13a(2) to impose conditions for the protection of rail employees adversely affected by the discontinuance. While it is recognized that the probable adverse effect upon employees is a factor to be considered in determining public convenience, such probable adverse effect in the present

proceeding does not afford a sufficient basis to justify continued operations of the involved trains.

Contentions of the parties as to either law or fact not specifically discussed herein have been given consideration and found to be without material significance or not justified.

We find that the present and future public convenience and necessity permit the discontinuance of service by the Southern Railway Company of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N.C., and that the continued operation thereof would constitute an unjust and undue burden upon the interstate operations of that carrier and upon interstate commerce.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D.C., on the 27th day of June, A.D. 1962.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINUANCE OF SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N.C.

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said Division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions of law, which report is hereby referred to and made a part hereof:

It is ordered, That interveners' motions to dismiss the proceeding be, and they are hereby denied.

It is further ordered, That the petition of the Southern Railway Company, to discontinue the operation of the passenger trains specified in the aforesaid report be, and it is hereby, granted.

It is further ordered, That this order shall be effective 20 days from the date of service hereof; and

It is further ordered, That if the authority herein granted is not exercised within one year from the effective date thereof, it shall be of no further force or effect.

By the Commission, division 3.

[SEAL]

HAROLD D. MCCOY, *Secretary.*

APPENDIX C

INTERSTATE COMMERCE COMMISSION

Served October 27, 1961

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D.C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect, has been served.

Finance Docket No. 21563

SOUTHERN RAILWAY COMPANY DISCONTINUANCE OF
SERVICE BETWEEN GREENSBORO AND GOLDSBORO, N.C.

Decided —

(1) Motions of protestants to dismiss proceeding overruled.

(2) Order granting petition of Southern Railway Company to discontinue the operation of trains 13

and 16 between Greensboro and Goldsboro, N.C.

Arthur J. Dixon and *Earl E. Eisenhart* for Southern Railway Company.

F. Kent Burns for State of North Carolina and North Carolina Utilities Commission.

Robert B. Holton, *W. J. Burton, Jr.*, and *R. L. Carnes* for railway labor organizations, protestants.

Claude V. Jones, *Victor S. Bryant*, *E. C. Bryson*, *E. C. Brooks, Jr.*, *A. H. Graham, Jr.*, and *Francis E. Walker* for other protestants.

REPORT AND ORDER RECOMMENDED BY
WILLIAM J. GIBBONS, HEARING EXAMINER

On April 6, 1961, the Southern Railway Company, a common carrier by railroad subject to Part I of the Interstate Commerce Act, filed a petition under section 13a(2) of the Act for authority to discontinue the operation of trains Nos. 13 and 16 between Greensboro and Goldsboro, N.C. A hearing was held in Raleigh, N.C. on July 11 through July 14, 1961, of which the Governor of the State of North Carolina and the North Carolina Utilities Commission had notice. The Southern Railway Company will be referred to herein as the "petitioner," the railway labor organizations and their representatives as "employees," and all other parties, including the State of North Carolina and the North Carolina Utilities Commission, will be referred to as "protestants." The proceeding has been referred to the examiner who presided at the hearing for a recommended report and order. Briefs have been filed.

On July 8, 1959, the Southern Railway Company filed an application with the North Carolina Utilities Commission for authority to discontinue the operation of the same trains that are involved in this proceeding. After hearing, the North Carolina Commission

issued its order dated January 20, 1960, denying the application. On appeal, a judgment of the Superior Court of Wake County, N.C., affirming the order of the North Carolina Utilities Commission, was affirmed by the North Carolina Supreme Court on February 3, 1961. *State of North Carolina, ex rel. Utilities Commission et al v. Southern Railway Company*, 254 N.C. 73.

At the outset of the hearing, protestants filed three separate motions to dismiss the proceeding on the grounds that (1) section 13a(2) is unconstitutional, (2) the decision of the Supreme Court of North Carolina which sustained the order of the State Commission is res judicata, and (3) no proper notice of the hearing was given as required by law.

It is well established that an administrative agency is without power to pass upon the constitutionality of a federal statute which it is called upon to administer. See *Engineers Public Service Co. v. SEC*, 78 U.S. App. D.C. 199, 138 F. 2d 936, 952-953, dismissed as moot 332 U.S. 788; *Pamitz v. District of Columbia*, 72 App. D.C. 131, 112 F. 2d 39; *Todd v. SEC*, 137 F. 2d 475, 478 (6th Cir.); *Central Nebraska Public Power & Irr. Dist. v. FPC*, 160 F. 2d 782 (8th Cir.) certiorari denied 332 U.S. 765; and *Public Utilities Commission v. United States*, 355 U.S. 534, 539.

With respect to the second motion to dismiss, it is the position of protestants that the matter has been conclusively adjudicated by a court of competent jurisdiction and that all parties are bound by such determination in the absence of an allegation or showing of a change of conditions, and since no change in conditions has been alleged or shown, the decision of the Supreme Court of North Carolina, *supra*, is res judicata.

In the past, this Commission has superseded court decisions when the applicable statute clearly indicated that it should do so. *Chicago, S.S. & S.B.R.* 234 I.C.C. 34; *Street Elect. Ry. & M. Coach Employees v. C.A. & E.R. Co.* 234 I.C.C. 301; and *Sprague v. Woll*, 122 F. 2d 128, certiorari denied 314 U.S. 669. The jurisdiction of this Commission over the subject matter of this proceeding has been established by virtue of the denial of petitioner's application by the North Carolina Commission and the subsequent filing by petitioner of the petition herein. After the jurisdiction of this Commission has been properly invoked, section 13a(2) contemplates that the matter be tried de novo and that the prior determination by the appropriate State authority is of an advisory nature only, having no binding effect upon this Commission.¹ To hold otherwise would render section 13a(2) ineffectual or wholly inoperative. Moreover, section 13a(2) raises an issue with respect to the burden on interstate commerce, an issue which neither the North Carolina Commission nor the North Carolina Supreme Court was empowered to determine. The doctrine of res judicata does not preclude relitigation when a new or different claim or issue is presented. For the above reasons, the examiner concludes that this Commission is not bound by the order of the North Carolina Commission or by the State Court decisions which affirmed that order.

Protestant's third motion to dismiss is based upon the ground that petitioner did not post notices of its proposed discontinuance in its stations, depots and passenger cars as required by law. In support of this

¹ Section 13a(2) provides, among other things, that this Commission "is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph."

motion, they contend that the applicable regulations (49 CFR 43.1) specifically state that the rules apply to a "notice" under section 13a(1) of the Act, or to a "petition" under section 13a(2), and further that section 43.5(j) of the regulations requires that a copy of the notice of the proposed discontinuance be posted "in a conspicuous place in each station, depot or other facility involved, including each ferry and each passenger car * * *" (49 CFR 43.5(j)).

It is to be observed that the regulations define the term "notice" as a notice provided for in section 13a(1) of the Act, and the term "petition" as a petition filed under section 13a(2). (49 CFR 43.2.) Section 43.5 of the regulations, paragraphs (a) through (k), specifically applies to a "notice" in a section 13a(1) proceeding, and section 43.6, paragraphs (a) through (d) specifically applies to a "petition" in a 13a(2) proceeding.²

Among other things, section 43.6 provides that petitions for authority to effect the discontinuance of a train shall contain information required by section 43.5 excepting paragraph (i) thereof. (49 CFR 43.6.) By requiring all other information contained in section 43.5 excepting paragraph (i), section 43.6 would appear to require the carrier to comply with the notice posting requirement of section 43.5(j).

Despite the language of section 43.6, such a requirement on the part of the carrier was never intended in a section 13a(2) proceeding. As originally issued by this Commission on August 14, 1958, paragraph (i) of section 43.5 contained the requirement with respect to the posting of notices in a section 13a(1) proceeding, and section 43.6, relating to petitions, required the

² Sections 43.7 and 43.8 apply to notices and petitions.

information set forth in section 43.5 excepting paragraph (i) thereof. (23 F.R. 6378, August 20, 1958). Thus, it is clear that, as originally issued, the applicable regulations did not require that the notice called for in a section 13a(1) proceeding be required in a section 13a(2) proceeding.

By subsequent amendments to the regulations on November 12, 1959, a new paragraph (i) was added to section 43.5 and the then existing paragraph (i) was amended and redesignated paragraph (j). (25 F.R. 434, January 20, 1960). No amendment or change in section 43.6 was made at that time and through inadvertence or as a result of an apparent mishap, the reference to paragraph (i) was retained in section 43.6 when it (paragraph (i)) should have been relettered paragraph (j). Thus, the only conclusion that can be drawn from the administrative history of the applicable regulations as well as from the contemporaneous construction placed thereon by this Commission is that the type of notice required in a section 13a(1) proceeding is not required in a section 13a(2) proceeding. In this connection, see *Pennsylvania R. R. Co.—Discontinuance of Passenger Service, Camden—Pemberton, N.J.*, F. D. No. 20553, decided June 6, 1960. To interpret the regulations differently would be inconsistent with the obvious intent expressed in sections 13a(1) and 13a(2) of the Act.

For the reasons stated, the 3 motions of protestants above-described to dismiss this proceeding should be overruled.

The trains sought to be discontinued, hereinafter identified as trains 13 and 16, operate daily between Greensboro and Goldsboro, a distance of 129.1 miles. As presently scheduled, eastbound train 16 leaves

Greensboro at 6:10 a.m., and arrives at Goldsboro at 10:45 a.m., serving 12 intermediate stations on regular stops and 9 stations on flag stops. Train 13 leaves Goldsboro at 3:05 p.m., and arrives at Greensboro at 7:50 p.m., serving 10 regular intermediate stations and 11 flag stops. These are the last two passenger trains operating in an east-west direction between Greensboro and Goldsboro. Appendix A hereto shows the schedules of the trains, the regular stops, flag stops and the populations of the cities and towns served by the trains.

The trains regularly consist of a 1,500-horsepower diesel electric locomotive, a passenger coach, and a combination car for passengers, baggage and express. In addition, on the portion of the run between Raleigh, N.C., and Greensboro, each train handles a sleeping car which, in turn, is handled on other passenger trains of petitioner between Greensboro and Washington, D.C., and on trains of the Pennsylvania Railroad between Washington and New York City, thus providing through sleeping car service between Raleigh, Washington, Philadelphia and New York City. The trains carry express but no mail. The trains are operated by a 5 man railroad crew consisting of an engineer, fireman, conductor, flagman, and brakeman. Although one crew makes a round trip, two crews are necessary in the operation because of limitations on the number of working days. In addition, a pullman conductor and a porter work the sleeping cars and an express messenger works the trains 5 days a week.

During the periods indicated below, the total number of passengers carried on trains 13 and 16, the daily average on each train and average passenger mile per train mile were as follows:

	Passengers		
	1959	1960	1961 (5 mos.)
Train 13.....	6,462	7,076	4,364
Train 16.....	7,789	7,700	4,550
Total.....	14,251	14,776	8,914
	Daily average		
	1959	1960	1961 (5 mos.)
Train 13.....	17.7	19.3	29.0
Train 16.....	21.3	21	30.1
Total.....	19.5	20.2	29.6
	Average passenger mile per train mile		
	1959	1960	1961 (5 mos.)
Train 13.....	6.51	7.16	10.67
Train 16.....	7.16	7.50	9.27
Total.....	6.83	7.33	9.97

Appendix "B" shows the on-and-off passenger count at each station for train 13 in 1960 and the daily average at each station. Appendix "C" shows similar data with respect to train 16 in 1960. In 1959 and in the first 5 months of 1961, the pattern of entrainment and detrainment was substantially the same as in 1960. As shown by these statistics, the overwhelming majority of the stations served averaged less than 1 passenger a day boarding train 13 or 16. Of the total passengers (7,076) carried by train 13 in 1960, 989 passengers entrained at Goldsboro, 826 at Raleigh, 2,929 at Durham and 1,464 at Burlington, and 5,048 passengers detrained at Greensboro. Of the total passengers (7,700) carried by train 16 in 1960, 5,101 entrained at Greensboro, 112 at Burlington, 775 at Durham and 667 at Raleigh. All but 1,279 of these passengers on train 16 detrained before reaching the

end of the line at Goldsboro, the heaviest detrainment (2,712) occurring at Durham, and at Burlington and Raleigh, with 1,275 each.

In 1948, both trains carried 56,739 passengers, an average of 77.51 per trip, as compared with a total of 14,776, or an average of 20.19 per trip, in 1960. During the same period, total passenger revenues declined from \$60,534, or an average passenger revenue of \$82.70 per trip, to \$21,135 or \$28.87 per trip. In 1959, 1960 and during the first 5 months of 1961, the average revenue per passenger was respectively, \$1.39, \$1.43, and \$1.19. Each train earns from 21 to 22 cents per train mile in passenger revenue, and about 34 cents per train mile in express revenue.

As shown by petitioner's exhibits, the revenues derived from the operation of the trains in 1959, 1960, and the first 5 months of 1961, the direct expenses incurred in connection therewith and the expenses in excess of revenues were as follows:

	1959	1960	1961 (5 mos.)
Revenues:			
Passenger.....	\$19,880	\$21,135	\$10,663
Express.....	31,875	37,630	4,607
Miscellaneous.....	356	336	140
Total revenues.....	52,111	59,101	15,410
Direct expenses.....	174,907	170,742	70,321
Expenses in excess of revenues.....	122,837	117,641	54,931

Appendix D shows the details of the operating results for both trains for 1960. Similar data is of record for 1959 and for the first 5 months of 1961.

Passenger revenues are actual as determined from the tickets collected by conductors, showing station to station travel, the class of passage and the type of ticket used. When interline travel is involved, revenues are determined on a mileage pro rate. Miscellaneous revenues represent actual revenues received

for the handling of newspapers, and express revenues are computed by the application of the system average revenue per carfoot mile to the carfoot miles assigned to trains 13 and 16. As to the computation of expenses, the wages of train and engine crews, vacation allowances, payroll taxes, and equipment rental are actual as shown by petitioner's books and records. Train fuel expenses were determined by applying the system average cost per gallon to the number of gallons of fuel consumed by these trains during a test period. Net losses from the operation of the sleeping car represents the excess of expenses over revenues between Raleigh and Greensboro, as billed to petitioner by the Pullman Company. Locomotive expenses are computed on the system average cost per diesel locomotive unit mile, and passenger car expenses are determined on a system average cost per passenger car mile. The joint facility expenses at the Goldsboro Union Station are computed on the basis of the number of cars moving in and out of the station.

Expenses resulting from damage to livestock and injuries to persons, incurred in 1960 and 1961, are actual. Neither of these expenses was incurred in 1959. Excluded from the carrier's operating costs are expenses for maintenance of tracks and structures, depreciation on equipment, traffic and supervisory expenses, property taxes, and general expenses. Other financial data presented by petitioner shows that system off-line revenues derived from the trains sought to be discontinued amounted to \$73,960 in 1959 and \$83,034 in 1960. After reducing these amounts by 50 percent as the cost of producing the revenue, the net feeder value of trains 13 and 15 was \$36,980 and \$41,517, respectively, in 1959 and 1960.

As a result of the discontinuance of these trains, petitioner claims that it will realize savings of

\$122,837, which is equivalent to its out-of-pocket loss in 1959. In addition, it estimates that it will save another \$15,015 annually, made up of station expenses (\$4,046), rental for lease of property at Burlington (\$6,280), and heat and light in various stations (\$4,149).

With respect to other available methods of transportation, petitioner submitted data to show that 15 motor buses operate daily in each direction between Greensboro and Raleigh and 8 between Raleigh and Goldsboro, with 2 daily scheduled operations in through service between Greensboro and Goldsboro. In addition, local bus service is available twice a day in each direction between Raleigh and Durham. Most of the buses in the area provide through service to and from points beyond the terminals of trains 13 and 16, in addition to providing local service. Of the 23 stations served by trains 13 and 16, McLeansville, Glen and Rose are the only stations not directly served by motor bus.

Other rail passenger service is available at 4 stations now served by trains 13 and 16. At Greensboro, 7 trains of the petitioner in each direction provide daily service, and at Raleigh 6 daily trains of the Seaboard Airline Railroad are available in each direction. The Atlantic Coast Line Railroad operates 3 passenger trains daily in each direction through Selma, and 1 train a day through Goldsboro. These trains provide through service, including pullman, accommodations, to and from, among other points, Washington, D.C., New York City, Atlanta, Ga., Birmingham, Ala., and Richmond, Va. In addition, daily air line service is available between the Raleigh-Durham and Greensboro-High Point Airports and Washington, D.C., New York, Philadelphia, Chicago and other major cities.

At present most of the express traffic originating at and destined to Greensboro, Burlington, Durham, Raleigh, Selma and Goldsboro is handled by over-the-highway motor trucks of the Railway Express Agency, although it can still be transported via trains 13 and 16. At 8 of the smaller communities, which the Railway Express Agency is not presently authorized to serve by truck, express service is provided exclusively by trains 13 and 16. In the event the trains are discontinued, the Railway Express Agency proposes to handle all of the express by motor truck. In addition, other passenger trains previously mentioned herein provide express service at Greensboro, Raleigh, Selma and Goldsboro, and various bus lines in the area offer a limited express service.

For the most part, the 7 county-area through which the trains operate is traversed by a network of paved, all weather highways, at least one of which substantially parallels petitioner's railroad. Most of the communities served by the trains are located on improved highways or in close proximity thereto. In the area served by the trains, there is an average of one passenger automobile for every 2.9 persons as compared with an average for the entire State of one automobile for every 3.3 persons.

At the hearing before the North Carolina Public Utilities Commission, 18 public witnesses testified as to the need for the service provided by trains 13 and 16. In the instant proceeding, testimony was offered by 21 witnesses, most of whom use the trains with varying degrees of frequency. Many of the witnesses testified as to the use of the trains by members of their families, their employees and associates. Fifteen of the opposition witnesses, including college professors, research scientists, business executives and government employees, came from the Durham area or

had an interest there, and 3 were business men from Burlington. Their use of the trains is primarily for travel on the sleeping car between Durham or Burlington and Washington, D.C., Philadelphia, New York City and other intermediate points.³ For personal convenience or because of medical necessity, these persons use the trains instead of other available modes of transportation. One witness expressed concern about express service to and from Elon College,⁴ while others feared that the discontinuance of these trains would hamper the industrial development of the area. Through oral testimony, petitioner denied that the presence or absence of rail passenger service has any bearing on industrial development.

Other evidence or protestants relates to the uncleanliness of the passenger stations on the line, and the deterioration of service generally, including the lack of dining facilities on the trains, the failure of petitioner to pre-cool the cars in the summertime and to properly heat them in the wintertime, and difficulties encountered in securing reservations. At the hearing, protestants took the position that poor service and lack of modern facilities, plus petitioner's failure to advertise or solicit business, are primarily responsible for the reduction in passenger patronage. As against this, petitioner contends that its passenger facilities are clean, comfortable and modern, and that in the past efforts to attract additional patronage through advertising and solicitation have been unproductive.

³ Durham and Burlington are 55 and 21.4 rail miles, respectively, from Greensboro, at which point the Pullman car on trains 13 and 16 is switched to and from other trains of petitioner.

⁴ For some time in the past, express service at this station has been provided by truck.

Both at the hearing and on brief, protestants assail the method used by petitioner in computing many of its expenses on the basis of system averages. In the past this method of computing locomotive and passenger car expenses has been approved in train discontinuance proceedings, as reasonably approximating the actual expenses incurred. *Louisville & N. R. Co., Discontinuance of Service*, 307 I.C.C. 173, and *Missouri Pac. R. Co., Discontinuance of Service*, 307 I.C.C. 787. As to the expenses at the Union Station in Goldsboro, these expenses are actual and will be savable to petitioner, since trains 13 and 16 are the last trains of petitioner using that terminal. Upon the discontinuance of the trains herein, the terminal expenses at Goldsboro would undoubtedly be redistributed among other carriers using the terminal. Since the terminal expense of the petitioner at Goldsboro amounts to about \$7,000 annually,* it does not appear that the redistribution thereof will impose an undue burden upon other carriers in interstate commerce. In this connection, see *Wabash Railroad Company Discontinuance of Service Between Toledo, Ohio, and Fort Wayne, Ind.*, F. D. No. 20710, decided November 30, 1959.

It is doubtful that full recognition should be accorded to expenses for damage to livestock and injury to persons, since neither of these recur with sufficient regularity to treat them as part of petitioner's normal operating expenses. Inasmuch as both items of expense are insubstantial, the exclusion of them from petitioner's operating results will not alter the ultimate

* Terminal expenses at Goldsboro were \$6,350 in 1959 and \$6,940 in 1960.

findings made herein.* Except for these, the remaining expenses presented by petitioner are directly attributable to the operation of the trains and appear to be proper and fairly realistic.

In determining the net feeder value of these trains, the protestants contend that the reduction of the gross system-connected revenues by 50 percent, as representing the cost of producing such revenues, is purely speculative. Protestants, however, suggest no alternative cost formula. In rail abandonment proceedings as well as in train discontinuance cases, the Commission has accepted the 50 percent formula as reasonably reflecting the cost of producing system off-line revenues. *Chicago, M. St. P. & P. R. Co., Discontinuance of Service*, 307 I.C.C. 565. In the absence of a more precise method for determining net feeder value, the examiner accepts as reasonable the 50 percent cost formula used by petitioner.

It is the further position of protestants that revenues are understated since no revenue was assigned to the trains for the transportation of pass riders. In a recent case, the Commission, in rejecting a similar contention, observed that "constructive revenues or phantom revenues—revenues from fares never collected—are of no measurable financial advantage to the carrier, and, thus should be disregarded in the computation of total revenues." *Southern Pacific Company Partial Discontinuance of Passenger Trains Between Los Angeles and Sacramento; Oakland and Sacramento; and San Francisco and San Jose, Calif.*, F.D. 20503, decided August 11, 1961. These remarks are equally applicable here. While no doubt the car-

* In 1960 expenses for injuries to persons were \$500 and for damage to livestock \$50. In 1961 expenses for injuries to persons was \$3,500. Neither of these expenses was incurred in 1959.

rier incurs some expense in the transportation of pass riders, the expenses involved should be considered as being merely incidental to the petitioner's primary responsibility of operating the trains for the benefit of the public. So long as the trains are required to operate, the additional cost of carrying pass riders or deadheads is infinitesimal. Thus, there is no basis for reducing or adjusting the expenses of these trains because of the pass riders. Similarly, there is no merit in protestants' contention that the computation of express revenues on a car-foot mile basis is improper. See, *Chicago & N. W. Ry Co. Discontinuance of Service*, 307 I.C.C. 775.

Another contention of protestants' is that any operating deficit on this line should be reduced by a percentage amount equivalent to the combined federal and State corporate income taxes. In considering and rejecting a similar contention in *New York Central R. Co. Abandonment*, 254 I.C.C. 745, 755, the Commission stated:

"The committee of Yonkers Commuters contends, in effect, that the actual loss of \$60,155 from the operation of the branch should be reduced to \$36,093 because if the loss had not been incurred, applicant would have paid a 40 percent Federal income tax on an equal sum, amounting to \$24,062, but obviously the loss was actually incurred, and it cannot reasonably be considered that it was less because applicant's total income [sic] tax might have been \$24,062 less than it would have been had it not been incurred."

The findings and conclusions in the above report were affirmed in *Public Service Commission of New York v. United States*, 56 F. Supp. 351, affirmed 323 U.S. 675, rehearing denied 323 U.S. 817. The Commission has recently reaffirmed its position on this

issue. See *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc. supra*. The contention of protestants on this issue must accordingly be rejected.

At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,599, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the overall prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the examiner disagrees. The legislative history of section 13a(2) indicates that the purpose thereof is to permit the discontinuance of the operation of services that "*no longer pay their way* and for which there is no longer any public need to justify the heavy financial losses involved." (S. Rep. 1647, 85th Cong.). [Emphasis supplied.] In considering a somewhat similar contention, in *Southern Pacific Co.—Partial Discontinuance of Passenger Trains, Los Angeles, etc. supra*, the Commission made the following pertinent statement:

"Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

In this same connection, the argument that losing **passenger operations** must be supported by constantly increasing freight rates is also untenable. In re-

jecting this argument, the Commission stated that such "theory of regulation would not be consonant with the national transportation policy, and would be fraught with disastrous possibilities." *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, 61. Similarly, the fact that petitioner's system operations are profitable is entitled to little or no weight. See *New York Central R. Co. Abandonment*, *supra*, *Seaboard A. L. Ry. Co. Abandonment*, 257 I.C.C. 738, *Great Northern Ry. Co.—Discontinuance of Service*, *supra*.

Although protestants submitted no financial data with respect to trains 13 and 16, they contend on brief that the maximum loss incurred by the operation of these trains in 1960 was \$33,688 instead of petitioner's claimed loss of \$117,641. To reach this conclusion, protestants subtracted \$6,940 (terminal expenses at the Goldsboro Union Station) and \$41,517 (net feeder value) from petitioner's claimed loss. From this amount (\$70,184),⁷ they further subtracted a federal income tax deduction (52 percent of \$70,184) of \$36,496.

For reasons hereinbefore stated, terminal expenses at Goldsboro have been allowed, and protestants' contention regarding income tax savings has been overruled. In the foregoing computation, protestants assume that petitioner will lose all system-connected revenue produced by these trains. Petitioner claims that it will retain all of it. Neither of these positions can be reasonably sustained. It seems obvious that petitioner will neither lose nor retain all of such revenue. The exact amount of system-connected revenue losses, however, can not be determined from the record. But assuming that the entire net feeder

⁷ There appears to be a mathematical error of \$1,000 in protestants' calculation.

value of these trains will be lost, petitioner's minimum out-of-pocket loss from the operation of these trains, on the basis of 1960 figures and after deducting \$550 for non-recurring expenses resulting from injuries to persons and livestock would be \$75,574 annually. Add to this the savings of \$15,015 in station expenses, previously referred to herein, and the net savings to be realized from the discontinuance of these trains would be at least \$90,589 a year. On the theory that some of the feeder value will be retained, the examiner is of the opinion that the annual savings will be considerably in excess of \$90,589 a year.

Among others, the factors to be considered in a proceeding of this nature are the populations of the communities served, the use made by the public of the trains sought to be discontinued, other means of transportation in the area, and the financial losses sustained by the carrier in providing the service. *Colorado v. United States*, 271 U.S. 153. Under the provisions of section 13a(2), the Commission's determination must be designed to protect interstate commerce from onerous burdens which may affect the ability of the carrier to continue to provide efficient transportation service to the public generally. Thus, in determining public convenience and necessity, the needs of the entire public, as distinguished from the relatively few, must be taken into account. When there is a demonstrated need for the service, the continuation thereof might be justified even at a loss to the carrier. In the final analysis, however, the need for the service must be balanced against the losses sustained in providing the service.

That some need exists for the service of trains 13 and 16 is shown by the testimony of the opposition witnesses. Their need, however, is relatively insubstantial when viewed in the light of the density of the

population of the area served and the patronage that is potentially available. Only scattered opposition appeared at the hearing in this proceeding and at the hearing held by the North Carolina Commission, and most of the opposition came from Durham, with virtually none east thereof. It is obvious that the needs of these few would be insufficient to justify the institution of a new service. Conversely, it should be equally apparent that under the test of public convenience and necessity, their needs no longer justify the continuation of existing service.

In arriving at this conclusion, the fact has not been overlooked that there has been an increase of nearly 50 percent in the daily average number of passengers patronizing these trains in the first 5 months of 1961 as compared with the entire year of 1959. In actual numbers, the daily average for both trains increased from 19.5 in 1959 to 29.6 in the first 5 months of 1961.

These figures, however, are of minor significance because the comparison of two entirely different periods fails to take into consideration seasonal variations in passenger traffic patterns and for the further reason that the increase in 1961 was due largely to an increased number of group movements of school children. Moreover, the percentage increase becomes even less meaningful when considered in the light of petitioner's statement that 82,000 additional passengers a year on these trains would be required to enable it to break even. Despite the increase in patronage in the first 5 months of 1961, passenger revenues during that period amounted to only \$10,653, or \$26,020 less than the wages of the train and engine crews.

For most of the major communities, alternate passenger service is available by bus and by air and 4 communities have rail passenger service. Only 3 small communities would be left wholly without bus

service. Likewise, express service by motor truck, as proposed by the Railway Express Agency, should be adequate for most of the communities. While industrial expansion may, under certain circumstances, depend on rail passenger service, it would appear that industry is much more concerned about rail freight service than rail passenger facilities. For this reason, and because of the ever-increasing use of automobiles in the area involved, the economic growth aspect of this case is relatively unimportant. Neither the isolated instances of poor service nor defective train equipment sustain protestants contention that petitioner has deliberately discouraged the use of these trains as part of its plan to present a plausible case for abandoning service on the line. Neither the present nor prospective traffic on the line would justify the use of expensive or ultramodern equipment on these trains. As to petitioner's failure to advertise the services of these trains, the Commission has repeatedly held that prospective patrons who must be coaxed to use a service evidently have no urgent need for it.

In the light of all these considerations, and for reasons hereinbefore stated, the conclusion is warranted that the continued operation of trains 13 and 16 would constitute a wasteful service and would impose an unjust and undue burden upon the interstate operation of petitioner and upon interstate commerce.

At the hearing, employees of petitioner whose jobs may be adversely affected as a consequence of the discontinuance herein requested that appropriate employee-protective conditions be imposed in the event the trains are discontinued. Although the 10 operating employees on the trains will be entitled to other jobs with equal or better pay, other employees with less seniority may be furloughed or temporarily

displaced. Three station employees and 2 pullman employees may also be furloughed. For reasons expressed in *Missouri Pacific Railroad Company Discontinuance of Passenger Service*, 312 I.C.C. 105, the examiner concludes that there is no authority under section 13a(2) for the imposition of conditions for the protection of employees adversely affected by the discontinuance of intrastate trains. It is recognized, however, that the probable adverse effect which the discontinuance of service would have upon employees is a factor to be considered in determining public convenience and necessity. In the instant proceeding such probable adverse effect does not afford a sufficient basis, when considered in connection with all of the facts hereinbefore discussed, to justify the continued operation of the trains.

Contentions of the parties as to either fact or law not specifically discussed herein have been given consideration and found to be without material significance or not justified.

In consideration of the petition here, the evidence adduced at the hearing, the contentions of the parties, and being fully advised in the premises, the examiner is of the opinion and finds that present and future public convenience and necessity permit the Southern Railway Company to discontinue the operation of its passenger trains Nos. 13 and 16 between Greensboro and Goldsboro, N.C., and that the continued operation thereof would constitute an unjust and undue burden upon petitioner's interstate operations and upon interstate commerce.

In view of the findings herein, the examiner recommends that the attached order granting the petition be entered.

By Wm. J. Gibbons, Hearing Examiner.

Wm. J. Gibbons.

[Signature] WM. J. GIBBONS.

APPENDIX A

SCHEDULES OF TRAINS NOS. 15 AND 16 OPERATING BETWEEN GREENSBORO AND GOLDSBORO AND POPULATIONS OF COMMUNITIES SERVED

Read down	Miles		Pop.	Read up
Daily 16				Daily 15
P.M.				P.M.
8:10	0	Lv. Greensboro.....	119,574	Ar. 7:50
8:23	2.0	McLennanville.....	500 ^a	17:25
8:30	14.7	Gibsonville.....	1,794	17:16
8:34	18.7	Eyon College.....	1,364	17:10
4:56	21.4	Burlington.....	23,199	7:02
8:53	23.1	Graham.....	7,722	18:42
9:07	25.8	New River.....	1,410	18:38
7:10	31.7	Mebane.....	3,394	8:32
7:20	37.0	Wilsford.....	500 ^a	18:21
7:26	40.9	Hillsboro.....	1,348	8:15
7:36	46.4	Glen.....	n.s. ^a	7:06
7:55	56.6	Ar. Durham.....	78,302	Lv. 5:55
8:10	55.0	Lv. Durham.....		Ar. 5:55
8:22	66.7	Warrenton.....	222	18:19
8:39	72.8	Cary.....	3,356	6:14
8:55	82.1	Ar. Raleigh.....	98,691	Lv. 5:00
9:10	81.1	Lv. Raleigh.....		Ar. 4:30
9:18	86.9	Garner.....	3,451	4:20
9:30	94.1	Clayton.....	8,862	4:07
9:39	103.7	Wilson's Mills.....	280	18:57
9:50	109.2	Ar. Selma.....	3,103	Lv. 3:50
10:00	109.2	Lv. Selma.....		Ar. 3:50
10:08	111.9	Fine Level.....	422	18:30
10:18	117.7	Princeton.....	948	3:23
10:25	123.7	Rose.....	n.s. ^a	18:15
10:45	129.1	Ar. Goldsboro.....	28,673	Lv. 3:05

f—Flag stop.

n.s.—No population shown.

Source: Southern Railway System Passenger Train Schedules, folder dated October 26, 1960. Population figures taken from Final 1960 Census, U.S. Bureau of the Census except that those marked with an asterisk were obtained from Rand McNally Commercial & Gas & Marketing Guide, 61st Edition, 1960.

APPENDIX B

PASSENGERS HANDLED ON TRAIN 13

	On	D/A*	Off	D/A*
Goldsbore, N.C.	989	2.7		
Rose, N.C.	1		2	
Princeton, N.C.	75	.2	130	0.4
Pine Level, N.C.	18		18	
Selma, N.C.	340	.9	201	.5
Wilson's Mills, N.C.	29	.1	23	.1
Clayton, N.C.	124	.3	17	
Garper, N.C.	57	.2	.5	
Raleigh, N.C.	826	2.3	371	1.0
Cary, N.C.	25	.1	70	.2
Durham, N.C.	2,439	8.0	483	1.2
Glenn, N.C.	1		53	.1
Hillsboro, N.C.	51	.1	266	.7
Effland, N.C.			12	
Mebane, N.C.	117	.3	38	.1
Haw River, N.C.	1		12	
Graham, N.C.	4		3	
Burlington, N.C.	1,404	4.0	136	.4
Elen College, N.C.	17		57	.2
Gibsonville, N.C.	5		146	.4
Greensboro, N.C.			2,046	12.8
Total	7,076	19.3	7,076	19.3

*Daily Average.

APPENDIX C

PASSENGERS HANDLED ON TRAIN 16

	On	D/A*	Off	D/A*
Greensboro, N.C.	8,101	11.9		
McLeansville, N.C.			2	
Githsonville, N.C.	3		17	
Eion College, N.C.	19	.1	51	.1
Burlington, N.C.	112	.3	1,275	3.5
Graham, N.C.	4		4	
Haw River, N.C.	4		25	.1
Mebane, N.C.	66	.2	63	.2
Elkand, N.C.	14		2	
Hillsboro, N.C.	127	.3	58	.2
Glenn, N.C.	14		4	
Durham, N.C.	775	2.1	2,712	7.4
Morrisville, N.C.			4	
Cary, N.C.	14		13	
Raleigh, N.C.	667	1.9	1,274	3.5
Garner, N.C.	49	.1	17	
Clayton, N.C.	174	.5	374	1.0
Wilsons Mills, N.C.	4		30	.1
Seima, N.C.	147	.4	343	.9
Pine Level, N.C.	26	.1	20	.1
Princeton, N.C.	378	1.0	133	.4
Goldboro, N.C.			1,279	3.5
Total	7,700	21.0	7,700	21.0

*Daily Average.

APPENDIX D

Operating Results of Passenger Trains 13 and 16 between Greensboro, N.C., and Goldsboro, N.C. Year 1960

Revenues:

Passenger	\$21, 135
Express	31, 680
Miscellaneous	386
Total revenues	53, 101

Direct expenses:

Wages, train and engine crews	\$89, 182
Payroll tax	5, 250
Train fuel	11, 244
Injuries to persons	500
Damage to livestock on R/W	50
Pullman Co. net loss	4, 226
Engine house expenses	1, 590
Passenger locomotive lubricants	1, 816
Passenger locomotive other supplies	372
Passenger locomotive repairs	21, 586
Passenger train cars—CHLW & icing	7, 164
Passenger train cars—lubricants	447
Passenger train cars—other exps	942
Passenger train cars—repairs	13, 692
Passenger train cars—air cond.	5, 060
Goldsboro Union Station	6, 940
Rental of equipment	681
Total direct expenses	170, 742
Direct expenses of excess revenues	117, 641

Recommended by Wm. J. Gibbons, Hearing Examiner.

[Signature] Wm. J. Gibbons
WM. J. GIBBONS.

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Supreme Court of the United States

OCTOBER TERM, 1963

SOUTHERN RAILWAY COMPANY, Appellant

v.

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE
DURHAM CHAMBER OF COMMERCE, INC.; RESEARCH
TRIANGLE INSTITUTE; ERVIN MILLS, INC.; and MARY
TRENT SEMANS, Appellees**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA**

**BRIEF FOR THE APPELLANT
SOUTHERN RAILWAY COMPANY**

WILLIAM T. JOYNER
1103 North Carolina
National Bank Building
Raleigh, North Carolina

EARL E. EISENHART, JR.
Southern Railway Company
P. O. Box 1808
Washington 13, D. C.

ROBERT L. RANDALL
WILLIAM H. ALLEN
701 Union Trust Building
Washington 5, D. C.

Attorneys for Appellant

JOYNER & HOWISON
COVINGTON & BURLING
Of Counsel

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Supreme Court of the United States

OCTOBER TERM, 1963

No. 74

SOUTHERN RAILWAY COMPANY, *Appellant*

v.

STATE OF NORTH CAROLINA; DUKE UNIVERSITY; THE
DURHAM CHAMBER OF COMMERCE, INC.; RESEARCH
TRIANGLE INSTITUTE; ERVIN MILLS, INC.; and MARY
TRENT SEMANS, *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

BRIEF FOR THE APPELLANT SOUTHERN RAILWAY COMPANY

OPINIONS BELOW

The opinion of the district court (R. 634) is reported at 210 F. Supp. 675. The report of the Interstate Commerce Commission (R. 10) is reported at 317 I.C.C. 255. The report and recommended order of the Commission's hearing examiner appear at R. 25.

JURISDICTION

This suit was brought by appellees under 28 U.S.C. §§ 1336, 1398 and 2321-2325 to set aside an order of the Interstate Commerce Commission. Trial was held

before a three-judge court convened under 28 U.S.C. § 2284. The judgment of the district court in setting aside the Commission's order and permanently enjoining appellant from acting thereunder was entered on October 19, 1962. On December 14, 1962, a notice of appeal to this Court was filed in the district court.

The jurisdiction of this Court to review the decision below is conferred by 28 U.S.C. §§ 1253 and 2101(b). This Court noted probable jurisdiction of the appeal on May 13, 1963.

STATUTE INVOLVED

Section 13a(2) of the Interstate Commerce Act, 72 Stat. 572, 49 U.S.C. § 13a(2), reads as follows:

"Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and

undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. * * *

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether Section 13a(2) of the Interstate Commerce Act precludes the Interstate Commerce Commission from authorizing discontinuance of the operation of an intrastate passenger train which is run at a substantial deficit and for which there is little public demand, without giving effect to the freight earnings of the particular line?
2. Whether the court below exceeded the scope of its review function in substituting, on the basis of undisputed evidence, its own determinations as to public convenience and necessity and undue burden upon the carrier's interstate operations for those of the Interstate Commerce Commission?

STATEMENT

Pursuant to the provisions of Section 13a(2) of the Interstate Commerce Act appellant Railway Company, on April 6, 1961, filed a petition with the Interstate Commerce Commission requesting permission to discontinue a pair of intrastate passenger trains between Greensboro and Goldsboro, North Carolina.¹ A

¹ These trains were made up of equipment that was used on once-a-day eastbound and a once-a-day westbound run between the two towns, which are about 130 miles apart by rail. On July 8, 1959, Southern had filed a petition with the North Carolina Utilities Commission for permission to discontinue this service, which constituted all the passenger rail service between the two towns. That petition was denied and the denial was sustained by the North Carolina Supreme Court in *North Carolina v. Southern Ry. Co.*, 254 N. C. 73, 118 S.E.2d 21 (1961).

public hearing was held before one of the Commission's hearing examiners and Southern submitted evidence showing that there was a lack of present or future public convenience and necessity in the continued operation of the passenger trains and that the continued operation of the trains constituted an undue and unjust burden upon its interstate operations. Several protestants, who constitute the present appellees, intervened and submitted evidence and testified in opposition to the petition.

On October 27, 1961, the Commission's hearing examiner filed his detailed report and recommended order finding *inter alia* that the overwhelming majority of the passenger stations served by the 130-mile line "averages less than one passenger a day" (R. 30); that the direct expenses of operating the once-a-day east-west train service were eight times the passenger revenues derived from the operation (R. 31, 32); that the net savings "to be realized from the discontinuance of these [two] trains would be at least \$90,589 a year" (R. 39); that the average number of passengers per train mile of operation and the average number of skilled employees working on the train per train mile operation were approximately seven (R. 30, 31); that daily airline service is available at the Raleigh-Durham and the Greensboro-High Point Airports between the area served by the trains and major cities (R. 33); that other rail passenger service was available at four of the stations served by the trains; and that adequate daily motor bus service was available between Greensboro and Goldsboro consisting of "15 motor buses [which] operate daily in each direction between Greensboro and Raleigh and eight between Raleigh and Goldsboro" (R. 33, 34). On the basis of these and other detailed findings, the hearing

examiner determined that the operation of the trains resulted in a net loss to Southern, that adequate alternate means of public transportation existed, and that the public demand for the two passenger trains was slight and had declined sharply since 1948. The hearing examiner, therefore, recommended that the petition to discontinue the trains in question be granted and that such discontinuance was consistent with present and future public convenience and necessity and that the continued operation of the trains would constitute an undue and unjust burden on Southern's interstate operations as well as an undue burden on interstate commerce.

On June 27, 1962, the Interstate Commerce Commission filed a report in which it adopted the findings and recommended conclusions of its hearing examiner and thereupon issued an order authorizing the discontinuance. Appellees petitioned for reconsideration of the order on July 16, 1962. On July 20 the Commission postponed the effective date of its order of June 27, 1962, so that it might adequately determine the merits of the petition for reconsideration. After reconsidering the record, the Commission, on August 6, 1962, denied the petition for rehearing and ordered the petition for discontinuance of the two passenger trains be made effective 15 days hence.

On August 28, 1962, appellees instituted an action in a three-judge district court seeking to set aside and enjoin the order of the Interstate Commerce Commission. On October 19, 1962, that court handed down its opinion and judgment, which set aside and annulled the Commission's order and "permanently and perpetually enjoined" Southern from discontinuing the pair of passenger trains. The court found that the

Commission had violated Section 13a(2) in failing to take into account profits from freight operations on the line between Greensboro and Goldsboro, and that there was not sufficient evidence to support the conclusion of the Commission as to undue burden and public convenience and necessity.

SUMMARY OF ARGUMENT

The threshold and dispositive question turns on the meaning of Section 13a(2) of the Transportation Act of 1958 insofar as that section governs the discontinuance of intrastate passenger trains. Section 13a(2) empowers the Commission to order the discontinuance of a "train" operated "wholly within the boundaries of a single State" if the state has first refused permission or failed to act upon an application within 120 days, and if the Commission, after a public hearing, finds (1) that discontinuance of the train is consistent with the present or future public convenience and necessity, and (2) that the continued operation of the train will constitute an undue burden upon the interstate operations of the carrier or upon interstate commerce.

In enacting Section 13a(2) Congress intended that interstate railroads might discontinue loss-producing intrastate passenger trains for which there was little public demand and that such discontinuance was to be judged on the basis of the deficit produced by the specific train. This is the only standard that is in accord with or permitted by the clear language of the statute and by the plain teaching of the legislative history. There is simply no authority anywhere for reading a requirement into Section 13a(2) that an unwanted loss-producing passenger train must be continued if the

profits from the freight operations on the line offset the loss produced by the passenger train.

In addition to misreading the plain meaning of Section 13a(2), the court below usurped the administrative function of the Commission when, in reviewing the determination of the Commission, the court drew its own ultimate conclusions as to matters confided to the Commission's judgment—whether the public convenience and necessity permitted discontinuance of Southern's trains and whether their continued operation would constitute an unjust and undue burden on interstate operations. Moreover, such contrary ultimate conclusions were drawn by the court on the basis of a record which the court acknowledged was complete and on the basis of subsidiary findings which the court accepted as correct and not in conflict.

ARGUMENT

I.

UNDER SECTION 13a(2) OF THE INTERSTATE COMMERCE ACT AS ADDED BY THE TRANSPORTATION ACT OF 1958, THE INTERSTATE COMMERCE COMMISSION MAY PERMIT THE DISCONTINUANCE OF THE INTRASTATE OPERATION OF A PASSENGER TRAIN AS AN UNJUST AND UNDUE BURDEN UPON THE RAILROAD AND UPON INTERSTATE COMMERCE, WHERE THERE IS LITTLE PUBLIC DEMAND FOR SUCH TRAIN, AND WHERE THE TRAIN IS OPERATED AT A SUBSTANTIAL LOSS, IRRESPECTIVE OF THE PROFITS EARNED BY THE FREIGHT SERVICE OPERATED ON THE SAME INTRASTATE LINE.

The Transportation Act of 1958 was enacted by Congress in an attempt to eliminate some of the causes of the serious financial situation faced by the country's railroads. One of the principal causes of the carriers' ills was the loss suffered in the operation of passenger

trains. The "passenger deficit" was estimated to amount to as much as \$700,000,000 a year. H. R. Rep. No. 1922, 85th Cong., 2d Sess., 11. And a major contributing cause of the deficit was the inability of the carriers, in some cases, to discontinue operation of unneeded and unprofitable passenger trains. Prior to 1958, the authority to permit the discontinuance of trains, whether intrastate or interstate, was vested in the individual states; and the only discontinuance authority granted to the Interstate Commerce Commission was, under Section 1(18) of the Interstate Commerce Act, to permit the complete abandonment of a given line. Thus, unless a carrier wished to cease both freight and passenger service on a given line, the discontinuance of a particular service required the permission of all of the states in which the service was performed.²

In the Transportation Act of 1958, Congress added Section 13a(2) to the Interstate Commerce Act, authorizing the Interstate Commerce Commission to permit a railroad to discontinue the operation of an intrastate passenger train where permission to discontinue such train had been denied or not acted upon within a 120-day period by the state, if, after a hearing, the Interstate Commerce Commission found (1) that the present and future public convenience and necessity permit such discontinuance, and (2) that the continued operation of "*such train*" constitutes an unjust and undue burden upon the interstate operations of the railroad or upon interstate commerce.

Acting pursuant to Section 13a(2), the Interstate Commerce Commission permitted Southern to discon-

² For a discussion of this background, see *New Jersey v. New York, S. & W.R.R.*, 372 U.S. 1, 5.

tinue a pair of intrastate passenger trains operated in North Carolina. The Commission found that the substantial deficit resulting from the operation of the trains, and the fact that there was little or no public demand for the passenger service provided by them, resulted in an unjust and undue burden upon Southern's interstate operations and upon interstate commerce.⁸ The Commission declined to give any weight to the intervenors' assertions as to the profit realized by Southern's operation of a freight service over the tracks on which the passenger trains were operated (R. 13, 14). Given the lack of public demand for the trains, the Commission also declined to regard as significant the profits realized by Southern on its overall operations (R. 16). In reversing the Commission, the court below ruled that "as a matter of law, [under Section 13a(2)] we think the Interstate Commerce Commission cannot be said to have made a proper finding unless it takes into account the profits that Southern Railway makes in its freight operations on the same line." (R. 640, 647).

The question, which is one of first impression before this Court, is whether Section 13a(2) required the Commission to take into account the profits earned by the freight service operated over the same tracks as the passenger trains which Southern sought to have discontinued. It is submitted that the statutory language and the relevant legislative history illustrate the clear error committed by the court below in requiring that freight operations on the line should be taken into account in determining whether the passenger trains are to be discontinued.

⁸ The Commission also made the requisite finding as to the public convenience and necessity. The district court's treatment of that finding is discussed in Part II of this argument.

The background of and the reason for the enactment of the statutory language embodied in Section 13a(2) are found in the committee reports that accompanied what was to become Section 13a(2). The Report of the Senate Committee on Interstate and Foreign Commerce pinpoints the fact that it was the purpose of Congress to free the railroads from deficit passenger services which could be operated only at the expense of the profits derived from other operations:

"A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce." S. Rep. No. 1647, 85th Cong., 2d Sess., p. 21.

The report accompanying the House version of the bill also illustrates a standard based solely on the particular deficit service. Thus the report states:

"A major cause of the worsening railroad situation is the unsatisfactory passenger situation. Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations."

* * *

"It is obvious that in very great measure these passenger losses are attributable to commuter service. It is clear that where such necessary services cannot be made to pay their way, the interested communities have a very real interest in working out the problem. It would seem evident that if such urban or inter-urban commuting service must

be preserved, losses incurred will have to be met in some way by the communities. It is unreasonable to expect that such service should continue to be subsidized by the freight shippers throughout the country.

"There are substantial losses, however, occurring in passenger service beyond those attributable solely to commuter service. Where this passenger service—and passenger service means more than merely transportation of passengers, and involves 'head end' service, such as baggage, mail and express—cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for." H. R. Rep. No. 1922, 85th Cong., 2d Sess., pp. 11-12.

These reports establish that Congress intended to permit the discontinuance of a given passenger train that no longer paid its own way and was little used by the public. In other words, Congress rejected the idea that unused and unneeded deficit-producing passenger trains should be continued by subsidizing their operations out of freight profits.

A subsidiary concern of Congress emerged during the debate on what became Section 13a. That concern was whether the Commission was to be required to allow the discontinuance of any train that was operated at a "net loss" irrespective of the public demand for the service. This is the so-called commuter problem. As first reported to the Senate, Section 13a was worded so that if the facts showed that the continued operation of a given train resulted in a "net loss" to the railroad, the Commission would be required to permit the railroad to discontinue the train, irrespective of public demand and need. 104 Cong. Rec. 10849. Senator

Javits of New York was concerned with the impact of such language on the deficit-producing, but vital, commuter system upon which many large urban areas rely for public transportation. Senator Javits proposed an amendment to remove the requirement of discontinuance on a showing of "net loss." In lieu of that single standard, Senator Javits' amendment authorized the Commission to balance the deficit resulting from the train service against the public need and demand for the service. *Id.* at 10838-10848. Senator Javits' amendment was rejected and the single "net loss" standard remained in the bill as initially passed by the Senate though the Commission's discontinuance authority was restricted to any "train . . . engaged in the transportation of passengers or property in interstate or foreign commerce. . . ." *Ibid.*

The version of Section 13a as reported to the House also contained the single "net loss" standard and was limited to passenger trains operating from a point in one state to a point in another state. The House, however, adopted an amendment offered from the floor by Congressman Harris, Chairman of the House Committee on Interstate and Foreign Commerce, which deleted the "net loss" standard. *Id.* at 12547. Congressman Harris made clear that his amendment did not mean that freight profits would in any way preclude a finding that a deficit from the operation of a passenger train resulted in an undue burden on interstate operations or interstate commerce, when he said, after the section had been amended, that through it "we are trying to get at" the situation in which "the [freight] shippers of this country are making up a deficit every year . . . in losses in passenger services." *Id.* at 12551.

Thereafter, since the Senate and House versions of Section 13a differed, the two bills were referred to conference. There the single "net loss" standard was removed, and Section 13a was broken up into two paragraphs. The first paragraph was made applicable to the interstate operation of trains, and paragraph 2 applied to trains operated "wholly within the boundaries of a single state." The conference version of the bill was then adopted by the House and Senate and became what is now Section 13a. In the Senate, Senator Javits discussed the conference version of the bill and commented that the text now "provided by the bill as to the discontinuance of any commuter service—because that was what troubled us particularly—is that it would constitute an undue burden upon the operation of such carrier, or carriers, or upon interstate commerce. As I construe that provision, the Commission would have to look at the overall situation of the entire Railroad in order to determine the inequity of requiring it to continue a particular commuter branch." *Id.* at 15529.

Thus, the statutory text, the committee reports and the Congressional debates establish that Section 13a(2) directs the Commission to weigh the public need and demand for a particular train service as against the burden imposed upon the carrier as a result of the financial loss stemming from the operation of the particular train. There is no suggestion that the earnings from the freight operations upon the same line must be taken, or indeed are properly to be taken, into account in determining whether a particular passenger train is to be discontinued. It is, of course, well recognized that the overall financial condition of the carrier is properly taken into account in considering

whether to discontinue a deficit-producing passenger train for which there is heavy public demand, i.e., commuter trains. It is equally clear that this is not the proper test when the public use and demand for the passenger train service are meager. This test is not at issue here, for not only has it been the consistent position of the Commission, but it was recognized by the court below, that it would be "unfair to compare the loss from a particular segment of a passenger rail line to the total profit of the company. Nor is this the test." (R. 654) The legal error committed below was that the court determined that the proper test was whether the total operations on the particular segment of railway involved, which is to say the freight operations plus passenger service, contributes its fair share to the overall company operation. As we have shown, the correct question is whether the particular passenger train or trains, discontinuance of which is sought, contribute to the overall company operations or whether they constitute a burden on the company and on interstate commerce.

Operation of the two passenger trains which Southern seeks to discontinue was found by the Commission to result in an annual net loss of at least \$90,000 (R. 31). In permitting the discontinuance, the Commission found that such a loss was not justified by the minuscule public demand of an average of seven passengers per train mile, and that what little use there was, was adequately provided for by alternative motor bus, airplane and highway facilities (R. 17). The court below voided the discontinuance on the ground that the profitable freight operations meant that the continued operation of the two trains could not constitute a burden on interstate commerce and the freight

service made the line as a whole contribute to Southern's operations.

On the basis of its expert acquaintance with Section 13a(2) of the 1958 Act, the Interstate Commerce Commission has consistently rejected, as it did in the instant case, the idea that freight earnings or profits are to be taken into account in determining whether a particular passenger train is to be discontinued. *Great Northern Ry. Co., Discontinuance of Service*, 307 I.C.C. 59, 69 (1959). In *Southern Pacific Co., Partial Discontinuance*, 312 I.C.C. 631, 633-34 (1961), the Commission held that:

"The burden (upon the carrier's interstate operations or upon interstate commerce, as expressed in section 13a(2)) . . . is to be measured by the injurious effect that the continued operation of the train proposed for discontinuance would have upon interstate commerce. As is indicated by its legislative history, the purpose of section 13a(2) is to permit the discontinuance of the operation of services that 'no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses involved.' (S. Rep. 1647, 85th Cong.) Nowhere in section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof, must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress."

Other cases involving orders of the Commission granting relief under Section 13a(2) have been sustained by three-judge district courts. *City of Phila-*

delphia v. United States, 197 F. Supp. 832 (E.D. Pa. 1961); *Montana v. United States*, 202 F. Supp. 600 (D. Mont. 1962); *California v. United States*, 207 F. Supp. 635 (N.D. Cal. 1962). In none of these has the standard of freight profit and overall financial soundness been applied. As correctly phrased by the court in the *Montana* case, the issue was whether "the losses from the operation of the trains in question are substantial and continuing and few people patronize the service . . . [and] adequate alternative transportation is available."

The decision of the court below perpetuates the very thing which Congress intended to end—the subsidizing by freight service profits of deficit-producing passenger services for which there is little public demand. The court below appeared to believe that the result it reached was required by two decisions of this Court, *Chicago M. St. P. & P. R. Co. v. Illinois*, 355 U.S. 300, and *Public Service Commission v. United States*, 356 U.S. 421. Both of these decisions arose under Section 13(4) of the Interstate Commerce Act prior to its amendment by the Transportation Act of 1958. Section 13(4) authorizes the Commission to order an increase in intrastate rates where such rates unjustly discriminate against interstate commerce. In both *Chicago* and *Public Service*, the Court held that the Commission erroneously found discrimination against interstate commerce when it did not consider the earnings from the total intrastate operation. (The 1958 Act amended Section 13(4) to make clear that the Commission need not take into account the total intrastate operation.) The court below concluded that the instant case stands "in an *a fortiori* relationship to" the *Chicago* and the *Public Service* cases "[f]or to

allow passenger service to be abandoned [under Section 13a(2)], as contrasted to raising passenger fares [under Section 13(4)], involves a far more serious incursion upon the traditional rights of the states." (R. 641)

In other words, the device used by the court below to force its conclusion was that the "undue burden" standard contained in section 13a(2) derives from section 13(4) of the Act" Therefore, since the *Chicago* and *Public Service* cases had read Section 13(4) as requiring that all intrastate operations (i.e., passenger trains and freight operations) be taken into account, and since that interpretation of Section 13(4) had been eliminated by the 1958 Act, the court below was able to argue that Congress' failure similarly to spell out what findings need not be made under Section 13a(2) meant that the *Chicago* and *Public Service* interpretation attached to that section. There are a number of factors which establish the erroneous nature of this overreached line of reasoning.

First, the phrase "undue burden" is the time-honored language that has been used by the Congress to refer to the regulatory activities of all Federal regulatory agencies concerned with the countless aspects of interstate commerce. It is one of the most common jurisdictional prerequisites to Federal regulation of interstate activities. In short, we have discovered nothing to support the statement of the court below that the undue burden language of Section 13a(2) "derives" from Section 13(4).

⁴ In fact, "undue burden" was introduced into the text of § 13(4) by the 1958 Amendment, although the phrase had theretofore been used judicially as a shorthand way of stating what the Commission must find to justify altering intrastate rates.

In the second place, Congress relieved the Commission in cases arising under Section 13(4) of the burden of separating intrastate operations from interstate operations which had been imposed by the *Chicago* and *Public Service* cases. It did so by adding language which permitted the Commission to find discrimination "without a separation of interstate and intrastate property, revenues, and expenses and without considering in totality the operations or results thereof of any carrier, or groups of carriers wholly within any State." The history of this addition shows that the added text was not designed to give a new or special or different meaning to the phrase "undue burden," but rather to clarify what had been the original purpose of Section 13(4), since "it is the possible interpretation of these recent court decisions [i.e., the *Chicago* and the *Public Service* cases] that would create a change in the present regulatory scheme." H. R. Rep. No. 2274, 85th Cong., 2d Sess., 12. The Section 13(4) derivation argument adopted below is also answered by the very language Congress enacted in Section 13a(2): i.e., that the "undue burden" must be found in "the continued operation or service of *such train*." This statutory reference to the operation of a train is certainly anything but a direction to the Commission to consider the "result of the total operations of the intrastate lines" in Section 13a(2) cases, as the court below concluded (R. 642-643):

In the third place, if the just-quoted holding of the court below were correct, it is difficult to see how such a proposition supports the requirement imposed below that the Commission take into account Southern's profit from the freight service on the line in question. What should follow from the court's conclusion is that

the Commission should have considered the total profit made by Southern from all of its intrastate operations in North Carolina, and this is so plainly at odds with the statutory language and the Congressional purpose as to be unthinkable.

The fourth factor on which the Section 13(4) derivation argument breaks is seen in Section 13a(1). That section, as noted earlier, empowers the Commission to require continuance where there has been a discontinuance of a train "operating from a point in one state to a point in any other state," where such train is "required by public convenience and necessity and will not unduly burden interstate or foreign commerce." Clearly, if there is a parallel to the "undue burden" in Section 13a(2), it is "unduly burden" in Section 13a(1), since both are products of the same act of Congress. It has yet to be suggested that the "unduly burden" test of Section 13a(1) requires the application of a freight profit factor derived from interstate and foreign freight operations.

Although perhaps it is only of footnote importance, the court below so applied its erroneous freight profit standard as to require reversal even had that standard been correct. This follows from the fact that the Commission had not considered the intrastate freight profit standard and the court below was compelled to acknowledge that there were no "figures relating to freight profits in the record." (R. 655)

No findings had in fact been made with respect to such freight profits and apparently no financial data specifically relating thereto had been submitted by the protestants. All the hearing examiner had noted was that the "protestants emphasized the fact that . . . [Southern's] net income alone from freight opera-

tions on the line between Greensboro and Goldsboro averages \$630,000." (R. 37) The Commission itself merely noted that "interveners allege that petitioner's net income from its freight operations over the line must be given effect when considering whether the continued operation of its passenger trains Nos. 13 and 16 will constitute a burden on interstate commerce." (R. 13-14)

The court below was thus in a dilemma in applying its new standard, since there were no findings in point. Accordingly, the court undertook to make an independent finding, viz., "On this same line of track the railroads made a net freight operating profit of \$630,000 in 1960." (R. 653-54) The court itself then stated that this profit was "apparently arrived at by taking 61% of the Southern Railway's average freight profits per mile multiplied by the total Greensboro-Goldsboro mileage." (R. 655) This 61% factor represents a comparison of intrastate and interstate freight traffic density on the line with Southern's total average traffic density (R. 374). It would have been erroneous for the Commission to find that solely because the interstate *and* intrastate traffic density on the line was 61% of the average system traffic density, the intrastate freight profits on the line would be 61% of total average freight profits per mile. The equation is meaningless. Nevertheless, it constitutes the sole basis of the finding of the court below.

II.

THE COURT BELOW INVADED THE PROVINCE OF THE COMMISSION BY MAKING ITS INDEPENDENT DETERMINATION OF WHAT THE PUBLIC CONVENIENCE AND NECESSITY PERMIT AND THE EXTENT OF THE BURDEN OF CONTINUED OPERATION ON INTERSTATE OPERATIONS AND INTERSTATE COMMERCE.

Section 13a(2) of the Interstate Commerce Act confides to the informed judgment of the Interstate Commerce Commission the determination whether the public convenience and necessity permits the discontinuance of an intrastate train and whether continued operation will constitute an unjust and undue burden upon the interstate operations of the carrier or upon interstate commerce. Procedural errors aside—and the court below correctly found there was none (R. 636-639)—unless the Commission made a clear mistake of law in reading the governing statute or its ultimate conclusions are not supported by adequate subsidiary findings or those findings are not supported by substantial evidence, the reviewing court may not interfere with the Commission's judgment. As this Court said of Section 1(18) of the Act, closely related to Section 13a(2) in providing for Commission authorization of abandonment of all operations over a rail line where it finds that the public convenience and necessity permit of such abandonment:

“The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission.” *Colorado v. United States*, 271 U.S. 153,

166. See also *ICC v. Parker*, 326 U.S. 60, 65; *United States v. Detroit Navigation Co.*, 326 U.S. 236, 241.

In form the court below acknowledged the limited scope of its review (R. 639). In form it found that the basic facts were not in conflict and that there was no real conflict in the evidence; and it accepted the Commission's findings of subsidiary facts (R. 656-657). In form it purported to set aside the Commission's ultimate conclusion as not supported by substantial evidence and not in accordance with law. (R. 656). In fact, however, it made an independent reappraisal of the evidentiary facts and of the Commission's findings on those facts and of the significance of the findings to the Commission's ultimate conclusions and thus, in the end, made its own determination of whether the statutory standards were satisfied. The court below thereby usurped the function of the Commission.

A. THE PUBLIC CONVENIENCE AND NECESSITY

The basic facts concerning the public convenience and necessity, as to which the court below found there was no conflict, and the Commission findings on these facts are simple and straightforward. In brief:⁵

In 1948 the two trains making up the roundtrip between Greensboro and Goldsboro carried more than 56,000 passengers, an average of 77 per trip. By 1960 the total number of passengers had declined to fewer than 15,000, or an average of 20 per trip. In the same period passenger revenues fell from \$60,000

⁵ What follows is drawn both from the Commission's opinion and the report of its hearing examiner, whose findings it adopted (R. 11).

to \$21,000, or from about \$83.00 per trip to \$29.00 per trip. In 1960 the average passenger mile per train mile on the 129 mile run was only slightly more than seven, while the trains are worked by the same number of persons, a five-man railroad crew and a Pullman conductor and a porter (R. 30). As a result of all this the savings to be realized from the discontinuance of the trains (in other words, the present drain on the Southern from operating them) amounts to at least \$90,000 a year and very probably considerably more than that (R. 31). The testimony of witnesses opposing discontinuance of the trains showed that there was some use of the service they provide, but such use is insubstantial in view of the density of the population of the area served and the consequent potential patronage (R. 34). Adequate alternative means of transportation will be available. The area served by the trains is traversed by a network of highways, and bus, air and other rail service will continue to be available (R. 33). The Southern did not deliberately discourage use of the trains in order to make a case for discontinuance of service, and its failure to advertise its service is of no consequence since patrons who must be coaxed to use a service have no urgent need for it (R. 16-17, 41). The elimination of the two trains would not have any adverse effect upon industrial growth in the area (R. 17).

In light of all these facts the Commission quite properly concluded that the public convenience and necessity permitted discontinuance of the trains.

The effort of the court below was to minimize these facts, to attempt to explain them away, to disparage their significance and to draw upon other evidence that the Commission adequately considered.

Thus, the district court summarized in twenty-one numbered paragraphs the testimony of the witnesses who said that there was a need for the trains and concluded that "in addition to the need for the services by the general public, the testimony indicated the need existed as to four principal areas: industry, hospital, Duke University, and the U. S. Army." (R. 649-652) The Commission's examiner, whose findings were adopted by the Commission, gave full consideration to this testimony and concluded that the need for the service was "relatively insubstantial" and that the needs of the few witnesses and the few persons for whom they spoke "would be insufficient to justify the institution of a new service" and consequently "their needs no longer justify the continuation of existing service." (R. 40)

The court below further noted that the area served by the trains was growing and said the sharp decline in use of the trains since 1948 appeared "to have bottomed out." (R. 652) This was on the basis of the fact that there was a slight increase in patronage in 1960 over 1959 and a somewhat larger increase in the first five months of 1961. Again, the Commission gave full consideration to these facts, noting that the apparent increase in patronage in 1961 was largely attributable to a greater number of group movements of school children and that the five-month figure did not take into account seasonal variations in use (R. 16). Moreover, the Commission found that despite the larger number of passengers in the first five months of 1961 passenger revenues for the period amounted to less than a third of the wages of the train and engine crews that operated the trains (R. 16, 30-31).

Further, in considering the slight use of the trains, which it could not find was substantial, the court ad-

verted to the claim, rejected by the Commission (R. 16), that Southern had discouraged use of the trains and gave weight, contrary to the Commission's expert judgment that prospective patrons who must be coaxed have no real need for service (R. 17), to the fact that the Southern had done little to promote the use of the trains (R. 653).

Finally, the court discounted the Commission's finding that remaining means of transportation in the area were adequate, on the apparent ground that railroad service should be available on a standby basis regardless of whether there is any continuing use of or need for it (R. 653). The Commission, in its investigation of the very passenger deficit that prompted enactment of Section 13a(2), concluded some time ago that the railroads could not be expected to bear the burden of providing standby capacity for the carriage of passengers. *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 482 (1959).

So it was that the court below came to hold, in its words, that there was no substantial evidence to support the Commission's finding that the public convenience and necessity permitted discontinuance of the two trains. Its holding was thus phrased but actually, as we have shown, what the court did was, on an independent reassessment of the evidence and the Commission's subsidiary findings, to make its own judgment of what the public convenience and necessity permitted. In this it committed the error against which this Court cautioned in *United States v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 536, where it held that a reviewing court "cannot substitute its own view concerning what should be done . . . for the Commission's judgment upon matters committed to its determination, if that has

support in the record and the applicable law." Or, as stated earlier, "The judicial function is exhausted when there is found to be rational basis for the conclusion approved by the administrative body." *Mississippi Valley Barge Line Co. v. United States*, 292 U.S. 282, 286-87.

Certainly the judicial function does not extend to what was done here for here the court did not merely look for substantial evidence or a rational basis for the Commission's conclusion but undertook to give its own answer to the question it posed at the outset of this branch of its opinion, "What then is the public convenience and necessity to be served by this railroad."

B. THE BURDEN ON INTERSTATE OPERATIONS AND INTERSTATE COMMERCE

The expressed inability of the court below "to find substantial evidential facts to support the Commission's holding that the service in question constitutes an undue burden upon the interstate aspects of the carrier's operations" (R. 656) is largely a function of its misconstruction of the statute, which has been laid bare in Part I of this argument. That is, by looking not to whether the continued operation of "such train[s]" would result in the proscribed burden, as Section 13a(2) commands, but to whether all of Southern's operations, taken together, over the line on which the trains run are profitable, it was able to conclude that "there is a profit, not a loss, a benefit, not a burden." (R. 654)

In fact, there is a loss—of upwards of \$90,000 a year. Such a loss obviously burdens the system-wide interstate operations of Southern. It is a burden "whether at the particular time the system as a whole is profit-

able or unprofitable." *New York Central R.R., Abandonment*, 254 I.C.C. 745 (1944), quoted in *Missouri Pacific R.R., Discontinuance*, 312 I.C.C. 31, 40 (1960). The court below, while adverting to Southern's system-wide profit, correctly held that "it is unfair to compare the loss from a particular segment of a passenger rail line to the total profit of the company. Nor is this the test." (R. 654) Whether the burden of a loss operation is "unjust and undue" depends upon whether the service fulfills a substantial public need. So the Commission has held, *Missouri Pacific R.R., Discontinuance*, *supra*, and so its hearing examiner said here: "When there is a demonstrated need for the service, the continuation thereof might be justified even at a loss to the carrier." (R. 40) Here the Commission found a demonstrated lack of sufficient need either to justify the service in the public convenience and necessity or to make the burden on interstate operation other than "unjust and undue."

The court below recognized the need for this kind of balancing (R. 653), but in addition ventured its own test: "whether the particular segment of the railway involved is contributing its fair share to the over-all company operations, or whether its share constitutes a burden on the company and on interstate commerce." (R. 654). Leaving aside the basic error, induced by the court's mistaken view of the meaning of the statute, of using the "segment of the railway" rather than the trains sought to be discontinued as the relevant unit, the application of this test to passenger operation on the Greensboro-Goldsboro line was bizarre. The court by computing made a meaningless comparison from figures in the record that Southern's average loss on passenger service was \$5,035 per mile.

whereas on the line in question it was only \$912 (R. 655).⁶ Quite apart from the fact that loss-per-mile is a meaningless figure, the apparent conclusion is that the Greensboro-Goldsboro passenger service is contributing its share because it results in less of a loss than some other passenger segments.⁷

In any event, it is clear that the court below erred in determining that there was no substantial evidence of an unjust and undue burden on interstate operations and interstate commerce. The evidence was plain and undisputed. It led inevitably to the Commission's conclusion that "the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce." (R. 17)

CONCLUSION

The judgment below should be reversed. Since the district court found the facts undisputed and did not invalidate any of the Commission's subsidiary findings but set aside its order because of (1) a mistaken reading of the applicable statute, and (2) an impermissible

⁶ The court was apparently unaware that it was comparing completely dissimilar figures. The average loss per mile on passenger service on the Southern was based on the fully distributed passenger deficit reported to the Interstate Commerce Commission according to its prescribed formula, whereas the average loss per mile on the line in question was based on the excess of direct expenses related only to the operation of trains Nos. 13 and 16 over the revenues made by these trains. The latter included no common expenses.

⁷ Equally irrelevant is the court's further recital that revenue per passenger mile for the two trains in 1960 was slightly higher than the system-wide average (R. 655). A train that carried one Pullman passenger one day might have large revenues per passenger mile.

independent redetermination of the ultimate questions confided to the Commission, there is no occasion for a remand except for the purpose of dismissing the complaint. Moreover, should this Court agree with the basic position of the district court, that Section 13a(2) requires an inquiry into freight profits that the Commission did not make, the case should be remanded to the district court with instructions to return it to the Commission to give the agency an opportunity to decide it on a correct view of the law.

Respectfully submitted,

WILLIAM T. JOYNER
1103 North Carolina
National Bank Building
Raleigh, North Carolina

EARL E. EISENHART, JR.
Southern Railway Company
P. O. Box 1808
Washington 13, D. C.

ROBERT L. RANDALL
WILLIAM H. ALLEN
701 Union Trust Building
Washington 5, D. C.

Attorneys for Appellant

JOYNER & HOWISON
COVINGTON & BURLING
Of Counsel

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 93

**UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS**

v.

THE STATE OF NORTH CAROLINA, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA**

**BRIEF FOR THE UNITED STATES AND THE
INTERSTATE COMMERCE COMMISSION**

OPINIONS BELOW

The opinion of the district court (R. 634) is reported at 210 F. Supp. 675, and its final judgment is set forth at R. 658-659. The decision of the Interstate Commerce Commission (Division Three) (R. 10-18) is reported at 317 I.C.C. 255. The report and recommended order of the Commission's Hearing Examiner, dated October 27, 1961, are set forth at R. 25-47.

JURISDICTION

The judgment of the district court was entered on October 19, 1962 (R. 658). Separate notices of ap-

peal by the United States and the Commission were filed on December 17, 1962 (R. 664-667). Probable jurisdiction was noted on May 13, 1963 (R. 668). The jurisdiction of the Court upon appeal rests on 28 U.S.C. 1253 and 2101(b).

QUESTIONS PRESENTED

1. Whether, under Section 13a(2) of the Interstate Commerce Act, the Commission may authorize the discontinuance of passenger trains operated within a State, where the trains are operated with reduced patronage and at a substantial out-of-pocket loss, without regard to whether freight operations over the particular line of railroad produce sufficient earnings so that the operation of the line as a whole makes an adequate contribution to overall company operations.
2. Whether the district court erred in rejecting the Commission's conclusion as to public convenience and necessity and in undertaking its own independent evaluation of the evidence.

STATUTE INVOLVED

The provisions of Section 13a(2), of the Interstate Commerce Act, 49 U.S.C. 13a(2), are reproduced in the Appendix, *infra*, pp. 40-41.

STATEMENT

The Southern Railway Company operates two deficit-producing passenger trains between Greensboro and Goldsboro, North Carolina. The distance be-

tween the two points is 129.1 miles. Train No. 16 operates eastbound in the morning from Greensboro to Goldsboro, and Train No. 13, consisting of the same equipment,¹ operates in the reverse direction in the late afternoon.

Pursuant to the provisions of Section 13a(2) of the Interstate Commerce Act, 49 U.S.C. 13a(2), the Southern Railway Company, on April 6, 1961, filed a petition with the Interstate Commerce Commission seeking authority to discontinue the service of passenger trains Nos. 13 and 16.² A hearing was held before an examiner and several protestants, including the State of North Carolina, appeared in opposition to the petition. On October 27, 1961, the examiner's detailed report was served (R. 25).

The examiner found that the operation of the trains resulted in a net loss to the Southern and that the discontinuance of the passenger service would result in annual savings "considerably in excess of \$90,589

¹ The train equipment consists of a 1,500 horsepower diesel electric locomotive, a passenger coach, and a combination car for passengers, baggage and express. On the portion of the run between Raleigh and Greensboro, N.C., a sleeping car is provided for through service to passengers going to points beyond and north of Greensboro. This car is switched to other Southern passenger trains at Greensboro (R. 29).

² A previous effort by the Southern to obtain permission from the North Carolina Utilities Commission to drop these two trains was unsuccessful. The Utilities Commission's action denying the application was upheld by the Supreme Court of North Carolina in *State of North Carolina v. Southern Railway Company*, 254 N.C. 73, 118 S.E. 2d 21. ✓

a year" (R. 39). He also found that the public demand for the service was slight, and had sharply declined since 1948, despite the high density of population in the area traversed by the two trains. Thus, in 1948 both trains carried 56,739 passengers, an average of 77.51 per trip, compared to 14,776 passengers in 1960 or an average of 20.19 per trip (R. 31).³ The examiner found that adequate alternative means of transportation were available to the public.⁴ Based upon these findings, the examiner concluded that the present and future public convenience and necessity permit the discontinuance of passenger trains 13 and 16 and that the continued operation of the trains would constitute an unjust and undue burden on the Southern's interstate operations and upon interstate commerce. Accordingly, he recommended that the petition be granted (R. 42).

³ From 1948 to 1960 the examiner found that total passenger revenues declined from \$60,534, or an average passenger revenue of \$82.70 per trip, to \$21,135 or \$28.87 per trip (R. 31).

⁴ The alternate means of transportation include motor buses operating on several daily schedules either in "through" or "connecting" service between Greensboro, Raleigh, Durham and Goldsboro. Rail passenger service is available at four of the stations served by trains 13 and 16. The Seaboard Airline Railroad and the Atlantic Coast Line Railroad provide several scheduled passenger trains at Raleigh and at Goldsboro. Daily airline service is available from the Raleigh-Durham and Greensboro-High Point airports. In addition there are many highways available between the communities in the area served by the trains, one of which substantially parallels the line of railroad involved here (R. 31).

Upon the filing of exceptions and replies to the examiner's report, the matter was considered by Division 3 of the Commission, consisting of three Commissioners. The Division issued a report dated June 27, 1962 (R. 10) in which it set forth its views on the issues raised by the exceptions and also adopted the findings and conclusions of the examiner. The Division further found (R. 17):

From a review of the evidence of record we conclude that the cost to the carrier of operating the trains involved greatly exceeds the benefit derived from said trains by the traveling public; that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express; that the public will not be materially inconvenienced by the discontinuance of the service here involved; that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce.

A petition seeking reconsideration by the entire Commission was denied on August 6, 1962. At the same time, it was provided that the order of the Commission authorizing the discontinuance of passenger trains 13 and 16 (which had been postponed pending

disposition of the petition) should become effective 15 days after August 8, 1962 (R. 20-21).

On August 18, 1962, the State of North Carolina and other protestants instituted an action in the district court seeking to set aside and enjoin the report and order of the Commission. Thereafter, on October 19, 1962, the three-judge court issued its opinion and decree (R. 634). The decree (1) set aside and enjoined the Commission's order; (2) required the Southern to reinstate the service which had been discontinued pursuant to the Commission's order, and (3) "permanently and perpetually enjoined and restrained [the Southern] from discontinuing passenger trains, Nos. 13 and 16, between Greensboro and Goldsboro, North Carolina" (R. 658).

The court held, first, that the Commission's determination that continued operation of the two trains constituted a burden on interstate commerce and the Commission's view of the extent of this burden were infected with a legal error. "As a matter of law, we think that the ICC cannot be said to have made a proper finding unless it takes into account the profits the Southern Railway makes in its freight operations on the same intrastate line" (R. 640) and unless it determines, in this light, "whether the particular segment of the railway involved is contributing its fair share to the over-all company operations * * *" (R. 654). Then, instead of remanding for a redetermination free of what the court had held to be legal error, the court itself made factual findings that there was a net profit on the over-all operations of the line and that the profitability of this line

compared favorably to that of all system operations of the carrier (R. 653). "Taking into account total operation of this line, there is a profit not a loss, a benefit, not a burden" (R. 654). Finally, the court held that, in light of these findings and its own estimate of the public need for the services of the two trains (R. 648-653), there was no reason to remand the proceeding to the Commission for a determination whether discontinuance should be authorized. It could itself conclude that continuance was not warranted (R. 656). It therefore set aside the Commission's order and enjoined the railroad from discontinuing these trains without permitting the Commission to reconsider the proceeding in light of the court's opinion (R. 656-657).

SUMMARY OF ARGUMENT

I

In determining that the continued operation of Southern's passenger trains between Greensboro and Goldsboro would constitute an undue burden on interstate commerce, the Interstate Commerce Commission was not required to consider the carrier's profits from the operation of freight trains between the same two points. Section 13a was enacted in 1958 to lessen the railroads' burden of huge passenger deficits by empowering the Commission to authorize the discontinuance of specific deficit services for which there was no longer a substantial public need. The language of Section 13a(2) requires the Commission to determine whether the continued operation of particular services ("such train") will constitute an

unjust and undue burden upon interstate commerce. It does not require the Commission to determine the existence of a burden on the basis of the operation of all freight and passenger trains on the line. This is at the heart of the purpose of Section 13a(2), which was intended to extend the Commission's then existing powers over abandonment of burdensome lines to enable the Commission to consider the burden of less than all the services on a line and to authorize the discontinuance of particular services. In thus extending the Commission's powers, the Congress chose language markedly similar to that applied by the courts under Sections 1(18)-1(20) and presumably intended that it be given a similar interpretation, i.e., simply to require a comparison of the burden on an interstate carrier of continuing the particular deficit operations with the public need for those same operations. This was clearly the standard to be applied to interstate trains under Section 13a(1) and the use of identical language to describe the standard for intrastate trains under Section 13a(2) confirms Congress' purpose in this regard. Finally, there is no policy justification for making the propriety of discontinuing particular passenger trains conditional, not on the over-all financial strength of the carrier nor even on its intrastate profits, but on the wholly fortuitous factor of freight profits on the same line.

The court below misconstrued the relevance of Section 13(4) to the interpretation of Section 13a(2). While just prior to the Transportation Act of 1958 this Court had required the Commission to make find-

ings as to the over-all intrastate profitability of a carrier before treating particular local rates as burdens on interstate commerce, the Court had never imposed any such limitation on the Commission's abandonment powers under Sections 1(18)-1(20). See *Colorado v. United States*, 271 U.S. 153. It was presumably to the Commission's abandonment powers and not to its powers over rates that Congress looked in extending the authority of the Commission to authorize the discontinuance of less than all the services on a line. This is particularly clear because, in amending Section 13(4) to make unnecessary such an investigation of over-all intrastate revenue, Congress indicated that it was reinstating what it believed was always the intent of the statute. Moreover, even if Section 13a(2) were to be interpreted just as Section 13(4) had been interpreted prior to the Transportation Act of 1958, this would not explain or justify the decision below which required the Commission to consider freight profits on the same line, not the over-all profits from all intrastate operations.

II

If the court below had correctly found that the Commission was misapplying the relevant standards under Section 13a(2), the only appropriate disposition would have been to remand to the Commission for a determination of the necessary subsidiary facts and a new consideration of the balance of public need against the burden to interstate commerce. Instead, the court erroneously undertook to perform these functions itself. In so doing, and led astray

by its findings as to the profitability of combined freight and passenger revenues on the Greensboro-Goldsboro line, the court overturned the Commission's conclusion that the public need did not justify the continued deficit operation of passenger trains on this line. The Commission's conclusion was amply supported by the evidence and by its findings of subsidiary facts, which the court below made clear it was not overturning. In this situation the Commission's order should have been sustained. The decision below should, therefore, be reversed with directions to dismiss the complaint.

ARGUMENT

I

IN DETERMINING THAT THE CONTINUED OPERATION OF THE PARTICULAR PASSENGER TRAINS WOULD CONSTITUTE AN UNDUE BURDEN UPON THE INTERSTATE OPERATIONS OF THE RAILROAD AND UPON INTERSTATE COMMERCE, THE COMMISSION WAS NOT REQUIRED TO CONSIDER THE CARRIER'S PROFITS FROM THE OPERATION OF FREIGHT TRAINS BETWEEN THE SAME TWO POINTS

Section 13a(2) of the Interstate Commerce Act empowers the Commission to authorize a railroad to discontinue a train operated between points within a State, when such permission has been denied or withheld for 120 days by the State, if, after a hearing, the Commission finds (a) that the present and future public convenience and necessity permit such discontinuance and (b) that continued operation of "such train" will constitute an unjust and undue burden upon the interstate operations of the railroad or upon interstate commerce. In authorizing the Southern

Railway Company to discontinue two passenger trains operated between points in North Carolina, the Commission found that these trains were incurring an annual deficit of over \$100,000. It held that this continuing deficit operation, the losses from which presumably would have to be made good by the total system profits of the carrier on its interstate as well as its other intrastate operations, constituted a burden on interstate commerce that Congress had directed it to remove if the burden was undue and not justified by the public convenience and necessity served by the operation. Reversing this holding, the court below held that, in determining (i) whether this operation constituted a burden on interstate commerce and (ii) the extent of the burden, the Commission erred in not taking "into account the profits that the Southern Railway makes in its freight operations on the same intrastate line" (R. 640). We submit that this holding of the court below is plainly incorrect in light of the purposes and history of Section 13a(2) and is unsound as a matter of regulatory policy.

A. SECTION 13a(2) WAS INTENDED TO EXTEND THE COMMISSION'S POWER UNDER SECTION 1(18)-1(20) SO THAT THE COMMISSION COULD AUTHORIZE THE DISCONTINUANCE OF A PART OF A CARRIER'S SERVICES ON A LINE WHEN THE LOSS ON THAT PART CONSTITUTED AN UNDUE BURDEN ON THE CARRIER AND THUS ON ITS INTERSTATE OPERATIONS

1. The Commission's power to authorize abandonment of intrastate lines prior to 1958

Since the enactment of the Transportation Act of 1920, Congress has been concerned with the effect of uneconomic railroad facilities and services upon the

national transportation system. In Sections 1(18) and 1(20) of that Act, Congress empowered the Commission to permit total abandonment of railroad lines, including lines which lie wholly within a State, where their continued operation would constitute a burden upon interstate commerce. *Colorado v. United States*, 271 U.S. 153; *Transit Commission v. United States*, 284 U.S. 360; *State of Illinois v. United States*, 213 F. Supp. 83 (N.D. Ill.) affirmed *per curiam*, 373 U.S. 378. The relationship between deficit operations on an intrastate line and a burden on interstate commerce was spelled out by Justice Brandeis in the *Colorado* case. "Prejudice to interstate commerce may be affected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce" (271 U.S. at 163). "Such depletion of the common resources in the local interest may conceivably be effected by continued operation of an intrastate branch in intrastate commerce at a large loss" (*ibid.*). Whether such continued operation constitutes a burden on interstate commerce was, the Court held, an issue appropriate for resolution by the Interstate Commerce Commission.*

* The Court stated (271 U.S. at 165-166):

"Because the same instrumentality serves both, Congress has power to assume not only some control but paramount control, insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in

The *Colorado* case involved the Commission's authorization of the abandonment of a particular branch line which had been operating at a substantial deficit. The State argued that the Commission's order could not be upheld because the Commission had not found that "by continued operation of the branch * * * the Company will be prevented from earning a fair return on the value of its properties as a whole, or that the entire intrastate business in Colorado will not earn such a return" (271 U.S. 166). This Court rejected that argument saying "the Act does not make issuance of the certificate conditional upon a finding that continued operation * * * will result in a denial of just compensation for the use in intrastate commerce of the property of the carrier within the State. * * * The sole test prescribed is that abandonment be consistent with public necessity and convenience" (271 U.S. 167-168). The Commission is simply directed to balance the needs of intrastate commerce for a particular line against the burden that the deficit operations of that line imposes on interstate commerce (*id.* at 168):

The benefit to one of the abandonment must be weighed against the inconvenience and loss to which the other will thereby be subjected. Conversely, the benefits to particular communities and commerce of continued operation must

the United States as an incident of its power over interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the Commission."

be weighed against the burden thereby imposed upon other commerce. * * * The result of this weighing—the judgment of the Commission—is expressed by its order granting or denying the certificate.

Since 1920, thousands of miles of railroad track have been abandoned in response to changed conditions in population, distribution, competition, etc. In exercising its jurisdiction over railroad abandonments, the Commission has never been precluded from authorizing abandonment of a particular uneconomic branch line merely because the remainder of the railroad's intrastate operations were profitable. See *Transit Commission v. United States*, 284 U.S. 360; *Georgia v. United States*, 28 F. Supp. 749 (E.D. Va.); cf. *North Carolina v. United States*, 124 F. Supp. 529 (M.D. N.C.); *Moeller v. Interstate Commerce Commission*, 261 F. Supp. 583 (S.D. Iowa); *State of Illinois v. United States*, 213 F. Supp. 83 (N.D. Ill.); affirmed *per curiam* 373 U.S. 378.

3. *The enactment of Section 13(a)(2) as part of the Transportation Act of 1958*

While the Interstate Commerce Commission had plenary power under Sections 1(18) to 1(20) to authorize the abandonment of all operations over particular railroad lines, prior to 1958 it was totally without statutory power to authorize a railroad to discontinue the operation of particular trains or services, leaving in operation the other trains or services on the particular line. *Board of Public Utility Commissioners of New Jersey v. United States*, 158 F. Supp. 98 (D.N.J.), dismissed as moot, 359 U.S. 982; *New Jersey*

v. *New York, S. & W. R. Co.*, 372 U.S. 1, 5. In the absence of federal regulation, many States had asserted and exercised authority over the discontinuance of both interstate and intrastate passenger trains. It was in order to fill this gap in the Commission's authority that Section 13(a)(2) was added to the Interstate Commerce Act in 1958.

In the years following 1920, the development of private and commercial motor passenger transportation and of air transportation modified to a very considerable extent the nation's reliance upon railroad passenger service. By 1957 intercity passenger traffic in the United States consisted of rail 3.7 percent, motorbus 3.5 percent, private automobile 88.7 percent, and air 3.9 percent. Coincident with the decline in public reliance upon rail passenger service, that service began, in 1930, to produce substantial deficits which were interrupted only in the World War II years. *Railroad Passenger Train Deficit*, 306 I.C.C. 417, 419, 429, 486-487). And see *King v. United States*, 344 U.S. 254. According to the Commission's studies, by 1956 the passenger losses amounted to approximately \$700 million annually (S. Rep. 1647, 85th Cong., 2d Sess., p. 9). Inevitably, the alleviation of the railroad passenger deficit became one of the principal concerns of the Congress when it again turned to railroad problems.

The impact of these trends upon the overall financial position of the railroads was described in 1958 by the House Committee on Interstate and Foreign Commerce (H. Rep. 1922, 85th Cong., 2d Sess., pp. 11-12)

in discussing the provision of the 1958 legislation which became Section 13a:

A major cause of the worsening railroad situation is the unsatisfactory passenger situation. Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations.

It is obvious that in very great measure these passenger losses are attributable to commuter service. * * * It is unreasonable to expect that such service would continue to be subsidized by the freight shippers throughout the country.

There are substantial losses, however, occurring in passenger service beyond those attributable solely to commuter service. Where this passenger service * * * cannot be made to pay its own way because of lack of patronage at reasonable rates, abandonment seems called for.

Similarly, the Senate Committee on Interstate and Foreign Commerce, in discussing the legislation, found that (S. Rep. 1647, 85th Cong., 2d Sess., p. 21):

A most serious problem for the railroads is the difficulty and delay they often encounter when they seek to discontinue or change the operation of services or facilities that no longer pay their way and for which there is no longer sufficient public need to justify the heavy financial losses entailed. The subcommittee believes that the maintenance and operation of such outmoded services and facilities constitutes a heavy burden on interstate commerce.

An important cause of that burden was the "excessively conservative and unduly repressive" attitude

of state regulatory bodies "in requiring the maintenance of uneconomic and unnecessary services and facilities" (*id.* at 22). The proposed remedy was to fill the gap in the powers of the I.C.C. which prevented it from authorizing the discontinuance of particular uneconomic services and facilities unless *all* the operations on the line were such as to warrant abandoning the line entirely.

As these excerpts from the Committee reports show, the House and Senate Committees were firmly opposed to subsidization of losing operations (such as passenger trains) out of revenues from other more profitable services (such as freight). During the legislative development of Section 13a, the major issue was not whether the Commission should be *empowered* to determine that losses from particular passenger services, balanced against the public need for such services, constitute an undue burden, but whether the Commission should be *required* to permit the discontinuance of any train operated at a "net loss" regardless of the need for the service. As originally reported by the Senate Committee, the bill (S. 3778, 85th Cong., 2d Sess., pp. 5, 6) would have authorized any railroad to discontinue or change the operation or service of any train or ferry engaged in transportation "in interstate, foreign and intrastate commerce, or any of them," unless the Commission found after hearing that the operation or service of such train or ferry "is required by public convenience and necessity and that such operation or service will not result in a net loss therefrom to the carrier or carriers and will

not otherwise unduly burden interstate or foreign commerce." In other words, if the Commission found that the continued operation of a particular train would result in a "net loss" to the carrier, the Commission would have been required to permit discontinuance, regardless of the public need for the service. Senator Smather, Chairman of the Surface Transportation Subcommittee which held hearings on the bill, made it very clear that the "net loss" standard did not refer to all operations on a line or all operations intrastate but to "the loss from the particular operation the railroad is rendering" (104 Cong. Rec. 10849).

The Senate bill, as reported, was subjected to two forms of attack on the Senate floor. Senator Javits, fearing discontinuance of the deficit commuter operations upon which some large cities depend for mass public transportation, proposed an amendment to delete the "net loss" standard as an absolute basis for discontinuance, and to substitute a requirement that the Commission balance the public need for the service against the deficit resulting from it (104 Cong. Rec. 10846. See also pp. 10838-10839). He pointed out in support of his amendment (104 Cong. Rec. 10847-10848):

* * * that the only criterion which is therein set forth is net loss * * * if it is a net loss, it does not matter whether or not it is construed as a burden on either interstate or foreign commerce. Therefore, if the Commission could find that public convenience and necessity required nonetheless, despite the fact of the net loss, operation of the particular commuter sec-

tion which is sought to be discontinued, it is my view, as the bill is written, that it would have no legal power to require it. The discontinuance would be left to the entire discretion of the individual carrier.

* * * *

If the bill is amended in the way I have suggested in the amendment I have submitted, it will result in giving to the Interstate Commerce Commission a balanced authority to deal with the situation, both in respect to losses and in respect to the public in the way of convenience and necessity.

Senator Javits' amendment was rejected (104 Cong. Rec. 10849), and the "net loss" standard remained in the bill as passed by the Senate. Senator Russell, objecting that the bill "is a direct and drastic blow to the authority of the State regulatory bodies" (104 Cong. Rec. 10850), initially had more success. The bill was amended to limit the Commission's discontinuance authority to interstate trains (104 Cong. Rec. 10862, 10864)—a change made over the objection of some Senators that the amendment would discriminate against those States that rely on interstate rail service (which could be discontinued by the I.C.C.) and in favor of those States which rely more upon intrastate service (which, under the amendment, could not be discontinued by the I.C.C.). 104 Cong. Rec. 10855, Senators Bridges and Cotton.

The House Bill, H.R. 12832, 85th Cong., 2d Sess., contained the same criteria as the original Senate bill for determining when a discontinuance would be permissible, but, following the floor amendment to the Senate

bill, it did not authorize the Commission to permit the discontinuance of intrastate trains. The "net loss" standard was deleted from the House bill on the floor of the House as the result of an amendment proposed by Chairman Harris of the House Interstate Foreign Commerce Committee (104 Cong. Rec. 12547) for reasons similar to those expressed by Senator Javits (104 Cong. Rec. 12530, 12547-48). The Commission was not to be required by statute to authorize the discontinuance of *every* net loss operation. Factors of public convenience and necessity could override the importance of a net loss on a particular service. See 104 Cong. Rec. 12547-48, Representative Coad.

The bills passed by the House and Senate differed most significantly in the fact that the Senate had retained the "net loss" provision under which the I.C.C. would be required to authorize the discontinuance of any train running at a net loss. In conference, the "net loss" standard of the Senate bill was deleted in favor of the House proposal.⁶ An

⁶ When the Conference report was discussed and agreed to in the Senate, Senator Javits stated with regard to the criteria (104 Cong. Rec. 15529) that: "now the test provided by the bill as to the discontinuance of any commuter service—because that was what troubled us particularly—is that it would constitute an undue burden upon the operations of such carrier or carriers, or upon interstate commerce. As I construe that provision, the commission would have to look at the overall situation of the entire railroad in order to determine the inequity of requiring it to continue a particular commuter branch."

Senator Bricker, a member of the Senate committee, responded that "The question involves the relation between the commuter income and the income from the other services which the railroad renders" (*ibid.*).

additional and no less significant change was also made. The Commission's authority was expanded so that it again would cover the intrastate operations which had been eliminated by amendment on the Senate floor. Section 13a was split into paragraph (1) applicable to trains operated between points in different states, and paragraph (2) applicable to trains operated "wholly within the boundaries of a single state." The same standards were to be applied by the Commission under the two provisions to determine whether discontinuance was justified. There is a difference, however, in procedure. Under 13a(1) the Commission may order continuance of an interstate service which the carrier itself could otherwise discontinue, upon a determination that it is "required by public convenience and necessity" and "will not unduly burden interstate or foreign commerce." Under 13a(2) the Commission may authorize discontinuance of an interstate service which is not required by "the present or future public convenience and necessity" and which "constitute[s] an unjust and undue burden * * * upon interstate commerce," but only after

⁷ A railroad proceeding under Paragraph (1) of Section 13a must first file notices of the proposed discontinuance with the Interstate Commerce Commission, with the Governors of the States in which the train operates, and in every station served by the train. After 30 days, the railroad may discontinue the train unless the Commission has decided to investigate the discontinuance. The Commission may require the railroad to continue operations, pending its investigation, for an additional four months. It also may, at the conclusion of the investigation, order service continued for another year. *New Jersey v. New York, S. & W. R. Co.*, 372 U.S. 1, 3-4.

the appropriate commission has been given an opportunity to act and has failed or refused to authorize discontinuance. Senator Smathers later explained that Section 13(a)(2):

protected the right of the States * * * by leaving to the State regulatory agencies the right to regulate and have a final decision with respect to the discontinuance of train service which originated and ended within one particular State, except when it could be established that intrastate service was a burden on interstate commerce. [104 Cong. Rec. 15528.]

In sum, the legislative history shows that Congress tempered, in two respects, the original purpose of the Senate bill to *require* the Interstate Commerce Commission to authorize the discontinuance of every interstate or intrastate train or service operating at a net loss: (1) by allowing the Commission to balance the public need for the train or service against the burdens caused by the operating deficit; and (2) by giving the States an opportunity to pass upon the discontinuance of an intrastate service before the carrier could petition the Interstate Commerce Commission. But the inquiry was to be directed at the particular service and not the line as a whole.

B. A REQUIREMENT THAT THE INTERSTATE COMMERCE COMMISSION DETERMINE THE EXISTENCE OR EXTENT OF THE BURDEN OF DEFICIT PASSENGER OPERATIONS ON INTERSTATE COMMERCE ONLY AFTER OFFSETTING FREIGHT PROFITS ON THE SAME LINE IS INCONSISTENT WITH THE PURPOSES OF SECTION 13a(2)

The language and history of Section 13a(2) make entirely clear that profits from freight services upon a particular line need not be considered in determining

whether passenger services on that line constitute a burden on interstate commerce. The Commission may authorize discontinuance of trains if it finds two things. First, it must find that the discontinuance would be consistent with present or future public convenience and necessity. This standard invokes the basic principle underlying the abandonment provisions of Section 1 (18)-(20), i.e., "the benefits * * * of continued operation must be weighed against the burden * * *". *Colorado v. United States*, 271 U.S. 153, 168. Second, the Commission must find that "the continued operation of *such train* * * * will constitute an unjust and undue burden upon the interstate operations of such carrier * * * or upon interstate commerce" (emphasis added). Clearly, it is the burden or loss resulting from continued operation of "*such train*" that is to be balanced against the public's need for the train service. Section 13a(2) contains no suggestion that "unjust and undue burden" can be found to exist only after taking into account profits from other service on the same segment of line.

That the burden resulting from continued operation of "such train" (and not the burden associated with all passenger and freight services on the line) is to be balanced against the public's need for the train service, is at the very heart of the 1958 Amendments. Before the addition of Section 13a(2), the I. C. C. already had authority, under Section 1(18)-1(20), to authorize the discontinuance of *all* services on an intrastate line when the net effect of continuing these services was to impose an undue burden on interstate

commerce. *Colorado v. United States*, 271 U.S. 153. The basic objective of the 1958 Amendments was to add to this the power to authorize the discontinuance of less than all the services and trains on a particular line when the trains or services to be eliminated impose a burden on the interstate operations of the carrier which is undue as measured against the public convenience and necessity they serve. Construing Section 13a(2), as the court below did, to require consideration of the overall burden caused by all operations on a line rather than of the burden of particular services or trains, frustrates this purpose and renders Section 13a(2) largely redundant.

Indeed, it is clear from the history of Section 13a(2) that Congress did not intend to condition the Commission's power to find a burden on interstate commerce even upon a showing of an overall burden from all intrastate operations, much less to condition it upon a showing of a burden from the sum of those operations that happen to take place upon the same piece of track. As noted above, this Court had considered and squarely held that the Commission need not find that overall intrastate operations of a carrier were not paying their way in order to authorize the abandonment of a particular intrastate line. *Colorado v. United States*, 271 U.S. 153, 167-168. This decision had been followed consistently by the federal courts. See *Georgia v. United States*, 28 F. Supp. 749 (E.D. Va.) and the other cases cited *supra*, p. 14. Congress presumably intended the same standards to apply when, using language markedly similar to that applied by the courts under Section 1(18)-1(20), it extended

the Commission's authority to fill the gap in the Commission's power left by that section; for the only suggested change in that standard was one that would have made any net loss on the operations of any train the occasion for a mandatory authorization of discontinuance. Certainly there is no reason to assume that, without any discussion, Congress intended to specify a different standard requiring recourse to the results of overall intrastate operations when, at the very same time, it was amending Section 13(4) to make clear that the Commission could find that a particular intrastate rate imposed an undue burden on interstate commerce "without a separation of interstate and intrastate * * * revenues * * * and without considering in totality the operations * * * of any carrier * * * wholly within any State."

The fact that Congress did not require the Commission to give effect to the profits from other services on the same line is also apparent from a comparison of 13a(1) and 13a(2). Seeking to protect the interstate railroad system from the immense losses resulting from uneconomic passenger services, Congress prescribed standards substantially identical to those applied in the *Colorado* case to govern the discontinuance of both "interstate" and "intrastate" trains. Thus, under Section 13a(1), the Commission may require a railroad to operate a train between points in different States only if it finds that the operation of "such train" "is required by public convenience and necessity and will not unduly burden interstate or foreign commerce." In the case of Section 13a(1) the undue burden is incontestably that flowing from the opera-

tion of "such train"—not the burden which would result from an overall loss from all operations on the particular interstate line. Since Congress authorized the Commission to apply the same standards in determining whether to authorize discontinuance of "intra-state" trains, there is no basis for the lower court's holding that the Commission is required under Section 13a(2) to consider the overall results of all operations on the intrastate line.

Finally, a requirement that the Commission consider profits from other operations on the same line has no justification in regulatory policy, for the profitability of other services between the two points where a deficit operation is conducted is a wholly fortuitous factor which cannot properly be given any weight in determining the need for continuing the deficit operation. The profitability of freight service on the line on which the passenger trains are operated bears no practical relationship either to the public's need for the passenger services or to the burden which the passenger deficit imposes on interstate commerce. If the public's need for continuance of particular deficit passenger services is so great that these services should, if possible, be subsidized by the carrier (i.e., by its security holders or indirectly by shippers of freight), then the carrier's ability to do so should be determined by looking to the results of its total operations, not just to the results of its freight operations on the same line. If the public's need for the deficit passenger service is outweighed by the burden of that service on the carrier and its interstate operations, then the passenger service should not be con-

tinued merely because of a showing that, entirely fortuitously, freight operations on that particular segment of line are unusually profitable. Similarly, the burden of deficit passenger services on the interstate operations of a carrier is no less if some of the carrier's more profitable freight operations are conducted on the same track used by the passenger trains than if this profit is made on other segments of track or line. There is thus no justification for considering freight profits on the particular segment of railroad line in determining whether the deficit operations of passenger trains on that line constitute an undue burden on interstate commerce.

C. THE LOWER COURT'S CONTRARY CONCLUSION WAS BOTTOMED ON MISTAKES AS TO THE RELEVANCE OF SECTION 13(4) AND AS TO THE LIKELIHOOD OF DISCRIMINATION AGAINST INTERSTATE TRAFFIC

In concluding that Section 13a(2) requires the Commission to consider the net results of all operations on a line before authorizing the discontinuance of certain trains on that line, the court below relied primarily on what it conceived to be the import for Section 13a(2) of this Court's construction of the somewhat different standards of Section 13(4) relating to rates prior to its amendment in 1958. In *Chicago, M., St. P. & P.R. Co. v. Illinois*, 355 U.S. 300, and *Public Service Commission of Utah v. United States*, 356 U.S. 421, this Court had held that findings with respect to the results of all intrastate operations are a necessary predicate for a conclusion that particular intrastate rates are causing an unfair discrimination against interstate commerce. The court below stated that 13a(2) cases

"stand in an a fortiori relationship to Section 13(4) cases," which it referred to as "the existing law applicable to discontinuance cases" (R. 641, 642). Although it recognized that, by the 1958 Transportation Act, Congress had amended Section 13(4) to make unnecessary such findings as to the overall results of intrastate operations, the court noted that similar language was not added to the proposed Section 13a(2) and therefore concluded that the "existing law" remained in effect.

We submit that there are three basic errors in the lower court's reasoning. First, there was no existing law applicable to discontinuance cases prior to 1958 for Section 13a was added in that year. The relevant question is therefore not whether Congress intended to change "the existing law" of 13a(2) when it amended Section 13(4) but whether Congress intended to impose on 13a(2) the very standards which it was, at the same time, eliminating from 13(4).

Second, at the time it enacted Section 13a(2) in 1958 Congress was plainly aware of the many abandonment cases under Section 1(18)-1(20) which had made clear that a finding that the overall results of intrastate operations were a burden to interstate commerce was *not* a necessary predicate to authorizing the abandonment of an intrastate line. See *Colorado v. United States*, 271 U.S. 153, 166-170, and the discussion *supra* at pages 11-14. It was presumably this line of cases and not the recent *Chicago and Utah* rate decisions under Section 13(4) to which Congress intended to assimilate the extension of the

Commission's abandonment powers which was to be accomplished by Section 13a(2). Moreover, when Congress amended Section 13(4) to make clear that the Commission need not determine the overall results of intrastate operations, Congress plainly meant to be returning to what it conceived as the original intent of Section 13(4), and not to be supplying a "new" meaning to that Section: "[I]t is the possible interpretation of these recent court decisions that would create a change in the present regulatory scheme." H. Rep. 2274, 85th Cong., 2d Sess., pp. 11-12.

Third, even if the court below were correct in construing the 1958 amendment to Section 13(4) as requiring the Commission, in dealing with intrastate rates, to consider proffered evidence as to the net results of the railroad's total operations within a particular State, that proposition would still be wholly unrelated to the lower court's conclusion that in determining under Section 13a(2) whether to authorize discontinuance of Southern's passenger train service between Greensboro and Goldsboro, the Commission must take into account Southern's "profit" from freight operations on the Greensboro-Goldsboro line (as distinguished from the totality of its intrastate operations in North Carolina). Nothing in the history and application of Section 13(4) or in the language or history of Section 13a(2) suggests that any weight is to be given to the totality of operating results upon a particular segment of railroad track.

In support of its contrary view, the court below also reasoned (R. 641) that:

If the ICC is then to cut off all of the intrastate operations that suffer a loss, while retaining all others, the result would be to require the intrastate operations to bear more than their share. The intent of Congress was to prevent burdens on interstate commerce, not require tribute therefor.

The answer to this is that the Congress, seeking to protect the interstate railroad system from huge losses resulting from uneconomic passenger services, has prescribed the same standards to govern the discontinuance of both "interstate" and "intrastate" trains. Thus, under Section 13a(1), the Commission may require a railroad to operate a train between points in different States only if it finds that the operation of "such train" "is required by public convenience and necessity and will not unduly burden interstate or foreign commerce." As in Section 13a(2), the undue burden is that flowing from the operation of "such train"—not the burden which would result from an overall loss from all operations on the particular interstate line. Since the Commission is to apply the same standards in determining whether to authorize discontinuance of both "interstate" and "intrastate" trains, there is no basis for the lower court's suggestion that the Commission's action here would "require the intrastate operations to bear more than their share."

THE COMMISSION PROPERLY DETERMINED, ON THE BASIS OF SUBSTANTIAL EVIDENCE BEFORE IT, THAT THE CONTINUED OPERATION OF THE TWO PASSENGER TRAINS AT A SUBSTANTIAL DEFICIT CONSTITUTED AN UNDUE BURDEN ON THE RAILROAD'S INTERSTATE OPERATIONS AND ON INTERSTATE COMMERCE AND THAT DISCONTINUANCE WAS CONSISTENT WITH THE PUBLIC CONVENIENCE AND NECESSITY

Assuming, as we do, that the lines of inquiry pursued by the district court were not relevant under the statute, *i.e.*, that there is no necessity to consider freight profits from other trains on the line, the Commission's findings, we submit, are supported by substantial evidence and its conclusions fully warranted.*

The Commission found the following basic facts. In 1948, both trains carried 56,739 passengers, an average of 77.51 per trip, as compared with a total of 14,776, or an average of 20.19 per trip in 1960, the last full year for which figures were available (R. 31). During the same period, total passenger revenues declined from \$60,534, or an average passenger revenue of \$82.70 per trip, to \$21,135 or \$28.87 per trip (R. 31). In 1960 the average number of passengers per train mile was 7.33 while a five-man railroad crew was necessary to operate each train's diesel engine and passenger cars (R. 29-30). In the same year the direct expenses of operating these trains was over three times their total revenue (R. 31). While only a total of

*The district court's view that the Commission's conclusions were unwarranted (see R. 656-657) was inevitably influenced by its holding that, considering revenues from freight traffic, there was "a profit not a loss, a benefit, not a burden" (R. 654).

14,776 passengers were carried on both trains in 1960, it was estimated that an additional 82,000 passengers would be required to enable the trains to break even (R. 40). Despite some "increase in patronage in the first five months of 1961, passenger revenues during that period amounted to * * * \$26,020 less than the wages of the train and engine crews" (R. 40). The discontinuance of the two trains would result in net savings to the carrier of at least \$90,589 per year (R. 39).

The need shown for these trains was found to be "relatively insubstantial when viewed in the light of the density of the population of the area served" (R. 40). The Commission also found "that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express" (R. 17). See *supra*, p. 4, n. 4. "For most of the major communities, alternate passenger service is available by bus and by air and 4 communities have rail passenger service. Only 3 small communities would be left wholly without bus service" (R. 40-41). The Commission and examiner both found that the discontinuance of passenger services would not seriously affect the industrial growth of the area (R. 17, 41).

We submit that, on the basis of these findings, the Commission could properly make the determinations of undue burden and consistency with the public convenience and necessity which are necessary to justify discontinuance of a train under Section 13a(2) and could fairly conclude (R. 17):

that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce.

Indeed, on strikingly similar facts in a case involving abandonment of a portion of a branch line, Judge Parker wrote for a three-judge court that "[a] finding that the Commission has abused its discretion in the matter would clearly not be warranted, and in the absence of such finding it is well settled that we may not substitute our judgment for that of the Commission." *North Carolina v. United States*, 124 F. Supp. 529, 532 (M.D. N.C.).

In reaching these conclusions the Commission did not disregard any factor which it should properly consider in a case such as this. The examiner and the Commission considered, but gave "little or no weight" (R. 38) to the overall prosperity of the carrier. This was plainly within the discretion of the Commission. As the legislative history set forth above indicates (*supra*, p. 20, n. 6), Congress recognized that overall system profits of a carrier would be one of the factors the Commission could consider in an appropriate case in balancing a definite and substantial need for continuance of a particular service against the burden this continuance would impose on interstate commerce or

the interstate operations of the carrier.* But the prosperity of the carrier need not be considered in every case, for it cannot itself justify the continuance of a deficit service for which there is very little public need. Otherwise, the strength of prosperous railroads could be sapped by the aggregate effect of many relatively small deficit operations for which there was little public need—a result obviously never intended by Congress. Thus, while the Commission has recognized that the overall financial position of a railroad may be taken into account in determining whether it should be required to continue deficit passenger services for which there is a definite and substantial need (see, *Louisville & N.R. Co. Discontinuance of Service*, 307 I.C.C. 173), in the present case the public need was slight and therefore the fact that the Southern is financially strong was properly held to be unimportant. *City of Philadelphia v. United States*, 197 F. Supp. 832 (E.D. Pa.); *State of Montana v. United States*, 202 F. Supp. 660 (D. Mont.); *People of the State of California v. United States*, 207 F. Supp. 635 (N.D. Calif.).

* Even without regard to the history of Section 13a(2), the potential relevance of this factor had been recognized in the application of Section 1(18)–1(20) to petitions to abandon particular lines. Thus, in *Colorado v. United States*, 271 U.S. 153, 168–169, Justice Brandeis had pointed out that, “In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier.”

The Commission thus reached the conclusions made determinative by the statute on the basis of substantial evidence in the record and without disregarding any factor it is required to consider in a case such as this. Insofar as the contrary conclusions of the court below do not wholly depend upon its finding that interstate commerce *benefited* from the combined freight and passenger operations on this line, the court's decision involves a complete substitution of its own judgment for that of the Commission. The court gave greater weight to an increase in passenger traffic for the first five months of 1961 (R. 653) than had the Commission and the examiner, who had noted that the increase was largely due to movement of school children and left passenger revenues still far short of train and engine crew wages (R. 16, 40). The court gave weight to its finding that Southern had failed to seek passengers (R. 653) while the Commission noted that "prospective patrons who must be coaxed to use a service have no urgent need for it" (R. 16-17). The court gave greater weight than the Commission to the effects of passenger service on industrial growth (R. 17, 651). The court determined that, despite the existence of alternate passenger transportation service by rail, bus, and air, the loss of Southern's passenger service should be given substantial weight because "the existence of *alternative* modes of travel in a heavily populated area should be considered a 'convenience,' and under some circumstances (such as air line strikes and bad weather) a 'necessity'" (R. 653). The Commission, it is apparent, believed that the desirability of

such standby services could not justify maintaining the deficit operations of these trains."

The foregoing does not exhaust the list of points on which the court substituted its judgment for the Commission's on questions committed by Congress to the Commission's discretion. It clearly demonstrates, however, that the court set about to resolve—in its own way—the question it posed: "What then is the public convenience and necessity to be served by this railroad" (R. 648). In resolving this question *de novo* the court repeatedly drew unwarranted inferences from the testimony of the protesting witnesses.

Thus, the court apparently gave considerable weight to the testimony of the Director of Transportation for Burlington Industries, Inc., to the effect that "30-40 employees of Burlington Industries are 'regular' users, averaging approximately one trip a month each" (P. 649, fn. 9). On cross-examination, the wit-

¹⁰ A broad study and investigation by the Commission in 1959 has led it to conclude that "public convenience and necessity" does not require the maintenance of deficit passenger services as a standby service for travellers who customarily travel by highway or by air:

"This record does not indicate that the railroad industry has the financial ability to retain any of its service or facilities solely as standby capacity. Those who benefit from any standby capacity that should be maintained must assume the obligation of financing such standby service to the extent of their needs" (*Railroad Passenger Train Deficit*, 306 I.C.C. 417, 482).

To the extent that the court below implied that passenger trains must be maintained as a standby service for those who customarily use other modes of transportation, this would mean that passenger trains could never be discontinued in heavily populated areas.

ness revised his estimate to about five who may use the train about once a month, and could not think of any other employees of Burlington who use the train service with greater frequency (R. 474, 476). Again, the district court refers to two students at Duke University who "testified as to their and other students' use of the trains" (R. 649). The two students were posted at the Durham train station for a period of 7 days prior to the opening of school to greet incoming first-year students using the trains. The testimony was that during the 7-day period a total of 37 students got off the train (R. 215-217). Significantly Duke University has a total enrollment of about 5,000 students (R. 216). The court recites that the President of Research Triangle Institute testified to the effect that the continuance of the train service "was extremely important to the proper functions" of his organization" (R. 650). But another witness for the Institute, the Chairman of its Board of Governors (R. 185), candidly stated that the Institute which has an annual travel budget of over \$13,000, spent \$4,000 for air travel, but only \$367 for train travel—without specifying how much of the latter was spent for travel on trains 13 and 16 (R. 193-194). And the court relies on the testimony of four civilian employees of the Army as to their view of the military need for these trains (R. 649), but it neglects the testimony of their commanding officer, who stated that "the normal individual with whom I am associated would probably travel by air" (R. 137).

But, in the final analysis, the district court's mistakes in assessing the elements of public interest are

merely symptoms of its far more basic error in usurping the responsibility of the Commission for performing these tasks. Where, as here, there is substantial evidence to support the Commission's findings as to the extent of patronage, the out-of-pocket losses incurred by the railroad in operating the trains, and the available alternative transportation, weighing those factors and drawing the ultimate conclusion as to the relation of the public need to the burden on the interstate carrier are functions entrusted to the Commission. *Colorado v. United States*, 271 U.S. 153, 165-166; *Transit Commission v. United States*, 284 U.S. 360; *Chesapeake & Ohio Ry. Co. v. United States*, 283 U.S. 35, 42; *Interstate Commerce Commission v. Parker*, 326 U.S. 60, 65; *United States v. Detroit Navigation Co.*, 326 U.S. 236, 241; *Interstate Commerce Commission v. Union Pacific R.R. Co.*, 222 U.S. 541, 547-548.

CONCLUSION

As we have shown: the Commission did not err in interpreting or applying the statutory standards; the Commission's determinations were supported by substantial evidence; and the district court has made clear that it did "not set aside any of the subsidiary findings of fact made by the agency" (R. 657). In this situation we believe that no useful purpose would be served by further review in the district court. If, as we contend, the facts found by the Commission amply justified the Commission's order, the judgment below should be reversed with directions to dismiss the complaint.

Respectfully submitted.

ARCHIBALD COX;
Solicitor General.

WILLIAM H. ORRICK, Jr.,
Assistant Attorney General.

PHILIP B. HEYMANN,
Assistant to the Solicitor General.

ROBERT B. HUMMEL,
I. DANIEL STEWART, Jr.,
Attorneys.

ROBERT W. GINNANE,
General Counsel,

H. NEIL GARSON,
Associate General Counsel,
Interstate Commerce Commission.

OCTOBER 1963.

APPENDIX

Section 13a(2) of the Interstate Commerce Act, 49 U.S.C. 13a(2) provides:

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hear-

ing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 74

SOUTHERN RAILWAY COMPANY, *Appellant*,

v.

NORTH CAROLINA, ET AL., *Appellees*.

No. 93

UNITED STATES, ET AL., *Appellants*,

v.

NORTH CAROLINA, ET AL., *Appellees*.

On Appeals from the United States District Court
for the Middle District of North Carolina

**MOTION OF
RAILWAY LABOR EXECUTIVES' ASSOCIATION
FOR LEAVE TO FILE A BRIEF ON THE MERITS
AS AMICUS CURIAE, AND ANNEXED BRIEF**

EDWARD J. HICKEY, JR.
JAMES L. HIGGS, JR.
620 Tower Building
Washington, D. C. 20005
*Attorneys for Railway Labor
Executives' Association*

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

November, 1963

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**MOTION OF
RAILWAY LABOR EXECUTIVES' ASSOCIATION
FOR LEAVE TO FILE A BRIEF ON THE MERITS
AS AMICUS CURIAE AND ANNEXED BRIEF**

The Railway Labor Executives' Association hereby respectfully moves the Court for leave to file the annexed brief *amicus curiae* in opposition to the appeals of the United States of America, et al., from the final order and judgment of the District Court reversing an order of

the Interstate Commerce Commission. The consent of the attorneys for all parties in No. 93 has been obtained; the consent of the attorney for the appellant in No. 74 was requested but refused.¹

I.

The Railway Labor Executives' Association is a voluntary unincorporated Association located in Washington, D. C., with which are affiliated twenty-three standard national and international railroad labor organizations that are the duly authorized representatives under the Railway Labor Act of the bulk of the nation's rail employees, including the employees of appellant Southern Railway Company. The names of these individual organizations are:

American Railway Supervisors' Association
 American Train Dispatchers' Association
 Brotherhood of Locomotive Engineers
 Brotherhood of Locomotive Firemen and Enginemen
 Brotherhood of Maintenance of Way Employees
 Brotherhood of Railroad Signalmen
 Brotherhood of Railroad Trainmen
 Brotherhood Railway Carmen of America
 Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
 Brotherhood of Sleeping Car Porters
 Hotel and Restaurant Employees and Bartenders,
 International Union
 International Association of Machinists
 International Brotherhood of Boilermakers, Iron
 Ship Builders, Blacksmiths, Forgers and Helpers
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen and Oilers
 International Organization Masters, Mates & Pilots
 of America

¹ The two appeals have been consolidated for argument. The Rules of the Court are not clear whether a motion for leave to file the annexed brief on the merits need be submitted under these circumstances.

National Marine Engineers' Beneficial Association
 Order of Railway Conductors and Brakemen
 Railroad Yardmasters of America
 Railway Employees' Department, AFL-CIO
 Seafarers' International Union of North America
 Sheet Metal Workers' International Association
 Switchmen's Union of North America
 The Order of Railroad Telegraphers

The Supreme Court of the United States has recognized the Association as the proper party to appear and speak for these affiliated organizations and the member-employees. *Interstate Commerce Commission v. Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association v. United States*, 339 U.S. 142 (1950); *American Trucking Associations, Inc., et al. v. United States*, 355 U.S. 141 (1957).

II.

The Association and the individual railroad organizations of which it is composed and the railroad employees they represent have a substantial interest in the issues presented by these appeals. These cases placed before the Court questions of initial impression involving recent amendments to the Interstate Commerce Act granting the Interstate Commerce Commission limited appellate jurisdiction over the decisions of state regulatory bodies denying applications for the discontinuances of trains operating within the boundaries of a single state.

The Association appeared in the proceeding before the Commission in opposition to the proposed discontinuances and advised the Commission that the same, if carried out, would result in adverse effect to certain employees of the carrier. The same adverse effect is present in any proposed train discontinuance. Thus the Association, the individual organizations of which it is composed and the employees represented by these organizations have a substantial interest in these appeals bringing into issue the

standards of administrative judgment which the Act requires the Commission to observe in reversing the judgments of state regulatory bodies and permitting discontinuances of "intrastate" train service.

III.

The appellees in these cases are not in the same position as is the Association to speak for the whole of railroad labor with respect to the important questions of statutory construction before the Court on these appeals.

Wherefore, the Association moves the Court for leave to file the brief annexed hereto on the merits of the questions presented.

Respectfully submitted,

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
*Attorneys for Railway Labor
Executives' Association*

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

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IN THE
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—
On Appeals from the United States District Court
for the Middle District of North Carolina

—
**BRIEF OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION AS AMICUS CURIAE**

—
The Railway Labor Executives' Association submits this brief as *amicus curiae* in support of the State of North Carolina, et al., appellees in the consolidated cases, and in opposition to the prayer of appellants for reversal of the final judgment of the United States District Court for the Middle District of North Carolina setting aside an order of the Interstate Commerce Commission (I.C.C.) for failure to consider substantial evidence of record, make adequate findings with respect thereto, and correctly apply

statutory standards as set forth in Section 13a(2) of the Interstate Commerce Act, 49 U.S.C. 13a(2), in determining that the public convenience and necessity permitted the discontinuance of the local passenger trains involved, and that their continued operation would constitute an unjust and undue burden upon the interstate operations of the Southern Railway Company.

INTEREST OF THE ASSOCIATION

The interest of the Association is set forth in the annexed motion for leave to file this brief.

ARGUMENT

Statutory Standards Under Section 13a(2).

The instant cases present issues of initial impression concerning the limited additional authority granted the I.C.C. and the standards to be observed in its appellate jurisdiction under Section 13a(2) over state regulatory bodies with respect to the need for continuance of trains operated wholly within the boundaries of a single state.

Enactment of the Transportation Act of 1958, 72 Stat. 568, added Section 13a to the Interstate Commerce Act (Act) and provided markedly different standards of procedure to be observed when discontinuance of an intra-state train (operated wholly within one state) vis-a-vis an interstate train (multi-state operations) is sought to be accomplished. *New Jersey v. New York, S. & W. R. Co.*, 372 U.S. 1 (1963). As this Court noted in that case, the legislative history of these extensions of I.C.C. authority furnishes assistance in determining the procedures and standards that must be observed by the Commission in its administrative handling of proceedings thereunder.

Perusal of the legislative debates clearly discloses the concern evidenced by the Congress in its consideration of S. 3778, 85th Cong., 2d Sess., wherein as originally drawn it provided for identical procedures and standards to be

followed by the railroads and the I.C.C. in the discontinuance of both "intrastate" and "interstate" trains. Upon the urging of Senator Russell, the Senate removed from the bill all authority given therein to the Commission to pass upon "intrastate" train discontinuances, thus avoiding what the Senator described as "a direct and drastic blow to the authority of state regulatory bodies," and "an assault on our dual form of government" (104 Cong. Rec., 10850). The companion bill in the House, H.R. 12832, 85th Cong., 2d Sess., specifically excluded from I.C.C. jurisdiction trains operating wholly within a single state and accordingly generated no similar problem.

Both bills in their initial provisions, while providing for testing the merits of all such proposals against public convenience and necessity and undue burden on interstate commerce, included a provision barring the Commission from denying any proposal if it found that operation of the train sought to be discontinued would result in a "net loss" to the carrier involved. It is shown that Senator Javits and others were of the view that the "net loss" provision in and of itself would become the sole criterion upon which all discontinuances would be decided, and the I.C.C. would be powerless to prevent discontinuances of any train if it were shown that its operation—alone—caused a "net loss" (104 Cong. Rec. 10838-9):

Opposition to the "net loss" provision was also based upon the failure of Congress to clearly set forth how such a result was to be calculated, whether other operations of the carrier were to be considered along with those of the particular train in the determination of the loss, and against what base or financial standard the impact of the "net loss" was to be measured. In the words of Senator Javits (quite prophetically):

Why do I say that the bill tries to move too far too fast? It is because the question of what constitutes net loss will have to be determined by some one somewhere as a matter of law. It is my view, as the bill is now

8

written, that question of law will be decided in terms of net loss on the particular section of a railroad which is sought to be discontinued, rather than the net loss on the total operations of the carrier of which that section of the railroad is a part.

.

As the bill is written, if a loss is shown on a particular section of a railroad, that railroad can discontinue that section of the railroad, and the Interstate Commerce Commission cannot stop it. (104 Cong. Rec. 10846-8)²

In conference the bill was modified to extend to the Commission limited authority with respect to "intrastate" train discontinuances differing substantially from the procedure and standards retained for interstate train discontinuances, and the objectionable "net loss" provision was deleted. The substance of these changes is best explained by the comments of Senators Smathers, Bricker and Javits in discussing the conference report in the Senate.

Senator Smathers:

With respect to the discontinuance of service, we have given to the Interstate Commerce Commission for the first time the right to discontinue service when the service crosses a State line. However, we protected the right of the States, so ably explained by the distinguished Senator from Georgia and those others concerned about States' rights, by leaving to the State regulatory agencies the right to regulate and have a final decision with respect to the discontinuance of train service which originated and ended within one particular State, except when it could be established that intrastate service was a burden on interstate commerce. (104 Cong. Rec. 15528).

² Senator Javits quite pointedly added "... almost Hornbook law that a public utility is the concern of everyone, and that the only time a public utility can be allowed to discontinue a branch of service upon which it is suffering a loss is if the operation seriously prejudices the whole financial picture of the utility." (104 Cong. Rec. 10848.)

At a later point and with a similar purpose in mind Senator Bricker, one of the conferees, commented:

There was one provision which was debated on the floor particularly, and which I discussed with the distinguished Senator from New York [Mr. Javits]. This provision dealt with the problem of net loss and the abandonment of service. That matter was of peculiar interest to the distinguished Senator from Connecticut [Mr. Purtell]. Although we differed on the interpretation of the section of the bill covering that subject, nevertheless, I assure the Senator from New York that the bill as it came from the conference puts the question of abandonment of service in practically the same situation, so far as original jurisdiction and appellate jurisdiction are concerned, *as were the provisions under Section 13 of the old interstate-commerce law.* (Emphasis supplied.)

So there is a primary jurisdiction existing within the States, and an appellate jurisdiction in the Interstate Commerce Commission, as was so aptly said by the chairman of the committee, only in a case of discrimination or an unfair burden. So the objections of the Senator from New York and the Senator from Connecticut were taken care of in the report of the the conferees, which is now before the Senate.

Senator Javits:

The point I raised, in which the Senator from Connecticut was so deeply concerned, was the question of discontinuance if a net loss was shown, that being, in effect, the sole ground. As I understand, the conference report eliminates the net loss test, and the new test which is now the test provided by the bill, as to the discontinuance of any commuter service—because that was what troubled us particularly—is that it would constitute an undue burden upon the operations of such carrier or carriers, or upon interstate commerce. (104 Cong. Rec. 15529).

Contrary to the contentions of the government appellants (Brief in No. 93, pages 8, 10-30) it is thus shown that,

while Congress in enacting Section 13a(2) used, in part, the language of Section 1(18) of the Act granting a railroad authority to abandon all or a part of its lines upon issuance of a certificate from the Commission that "the present or future public convenience and necessity permit of such abandonment," it added to Section 13a(2) the further requirement that the Commission also find that the continued operation of the train sought to be discontinued "will constitute an unjust and undue burden upon the interstate operations of such carrier . . . or upon interstate commerce."

It is conceded that the Commission since the passage of the Transportation Act of 1920 has had the power to authorize the abandonment of a line of railroad operated "wholly within the boundaries of a single state," *Colorado v. United States*, 271 U.S. 153 (1926). But such authority is direct and without retention of primary jurisdiction by the states, and the grant of appellate jurisdiction with the Commission. Authority to permit abandonments, which may be exercised by the Commission without the necessity of a hearing, may be more reasonably likened to the authority granted the Commission under Section 13a(1) applicable to discontinuance of interstate trains, as to which, also, no hearing is required. *State of New Jersey v. United States*, 168 F. Supp. 324 (D.C.N.J. 1958) affirmed per curiam 359 U.S. 27 (1959). It was the manifest intention of Congress to leave regulation of local operations to the States. *New Jersey v. New York, S. & W. R. Co.*, *supra*. It is clear, therefore, the extension of appellate jurisdiction by petition to, and hearing by, the Commission as set forth in Section 13a(2), as found by the District Court (R. 642-3), and as explained (hereinbefore) by Senator Bricker is comparable to that which the Commission was earlier granted under Sections 13(3) and 13(4) (104 Cong. Rec. 15529).

Evidence and Findings in the Light of Statutory Standards

The opinion of the District Court (R. 647-657) details the substantial evidence of record which the Commission was required to consider, make findings with respect thereto, and upon which its conclusions were to be based. In summary, the District Court found evidence: for the need of the service by the general public, industry, hospitals, Duke University, and the U. S. Army; that the trains (the two involved constituting the last operating between the points involved) served an area growing in population and industry; and that passenger use within the last two and a half years had increased. The Commission's conclusion with respect to the need for the service as thus set forth was:

However, despite the increase in patronage during the first 5 months of 1961, passenger revenues during that period amounted to only \$10,650 or approximately \$26,000 less than train and engine crew wages (R. 16).³

The evidence of record also showed: that the carrier's annual out-of-pocket savings resulting from the discontinuance of the two trains would exceed \$90,000; a net freight operating profit of \$630,000 in 1960 over the same trackage; that the Southern Railway System made an over-all profit of \$30,702,542 in 1960, and in 1959, \$33,126,744 after payment of all taxes and all operating expenses; and that its accumulated surplus in 1960 exceeded \$343.5 million.

Ruling on contentions that consideration should be given to the over-all profitability of the trackage involved, and that the deficits from passenger operations should be

³ With respect to the same evidence the Examiner found (and his findings were adopted by the Commission) "it is obvious that the needs of these few would be insufficient to justify the institution of a new service. Conversely, it should be equally apparent that under the interests of public convenience and necessity, their needs no longer justify the continuance of existing service" (R. 40).

measured against it and the over-all prosperity of the carrier, the Commission held that Section 13a(2) empowers it to authorize the discontinuance of a train upon finding that the financial results of its operations considered alone constitute an unjust and undue burden upon the interstate operations of a carrier or upon interstate commerce, adding that the legislative history of 13a(2) indicates that its purpose is to permit the discontinuance of the operation of services that "no longer pay their way and for which there is no longer any public need to justify the heavy financial losses involved." (R. 14.)

In substance the Commission held that the mere "net loss" resulting from operation of the two trains justified their discontinuance—a criterion which, as shown above, was specifically rejected by the Congress in enacting Section 13a(2).

The parity between Sections 13a(2) (even without resort to its legislative history) and 13(3) and 13(4) is clearly shown by comparison of their provisions. As this Court said with respect to the power of the Commission under Section 13(4) to alter intrastate rates, "A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders must meet 'a high standard of certainty,' " that the mere existence of a difference in the level of intrastate rates versus interstate rates does not justify Commission interference, and that the Commission "is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission." *North Carolina v. United States*, 325 U.S. 507, 511 (1945).

Justification of an incursion of this nature upon the traditional rights of a State must clearly appear, *Chicago M. St. P. & P. R. Co. v. United States*, 355 U.S. 300 (1958). This Court there said:

The basis objective of § 13(4) . . . is to prevent a discrimination against the carrier's interstate traffic which would result from saddling that traffic with an undue burden of providing intrastate services. A fair picture of the intrastate operation . . . is not shown . . . by limited consideration to the particular commuter service in disregard of revenue contributed by the other intrastate services.

Clearly those members of Congress concerned with the effect of the legislation on local operations—commuter service and the like—understood that Section 13a(2) as it was enacted would require the Commission to consider all operations of the carrier and their financial results in passing on the question of undue burden. As Senator Javits said:

As I construe that provision the Commission would have to look at the overall situation of the entire railroad in order to determine the inequity of requiring it to continue a particular commuter branch.

Senator Bricker replied:

The question involves the relation between the commuter income and income from the other services which the railroad renders. (104 Cong. Rec. 15529.)

The District Court held that it was error for the Commission to conclude there was an undue burden on interstate commerce or the interstate operations of the Southern without taking into consideration the total financial results of operation of the trackage involved, and the over-all prosperity of the Southern (R. 640). It was its view that whereas no single element of the evidence was in itself conclusive of the issues, the controversy could not reasonably be resolved without the Commission looking at the whole picture—particularly where competent evidence thereon was before the Commission (R. 643).

Whether the operation of the passenger service is a burden on interstate commerce and whether there is

any longer a public need sufficient to justify the financial losses involved are questions not susceptible of scientific measurement or exact formulae but are questions of degree and involve the balancing of conflicting interests. All material factors bearing on the questions must be taken into account, the I.C.C. must consider a fair picture. *Colorado v. United States, supra*, pp. 168-9.

There was warrant, therefore, for the District Court to conclude that the failure of the Commission to consider substantial evidence of record required by the administrative standards of Section 13a(2) substantially prejudiced its ultimate conclusion.

CONCLUSION

It is respectfully submitted that the Court should affirm the judgment of the District Court.

Respectfully submitted,

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
*Attorneys for Railway Labor
Executives' Association*

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

November, 1963

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In The
Supreme Court of the United States
October Term, 1963

**UNITED STATES OF AMERICA; INTERSTATE
COMMERCE COMMISSION, and SOUTHERN
RAILWAY COMPANY, Appellants**

v.

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY;
THE DURHAM CHAMBER OF COMMERCE, INC.;
RESEARCH TRIANGLE INSTITUTE; ERWIN MILLS,
INC.; and MARY TRENT SEMANS, Appellees**

**On Appeal From the United States District Court for
the Middle District of North Carolina**

BRIEF FOR THE APPELLEES

**STATE OF NORTH CAROLINA; DUKE UNIVERSITY;
THE DURHAM CHAMBER OF COMMERCE, INC.;
RESEARCH TRIANGLE INSTITUTE; ERWIN MILLS,
INC.; and MARY TRENT SEMANS**

THOMAS WADE BRUTON
Attorney General of North Carolina
CHARLES W. BARBEE, JR.
Assistant Attorney General of
North Carolina
Justice Building, Raleigh, N. C.

E. C. BRYSON
114 Allen Building
Duke University, Durham, N. C.

VICTOR S. BRYANT
F. GORDON BATTLE
111 Corcoran St., Durham, N. C.

A. H. GRAHAM, JR.
111 Corcoran St., Durham, N. C.

E. G. BROOKS, JR.
Trust Building, Durham, N. C.

Attorneys for Appellees

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No. 74 and No. 93

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INC.; and MARY TRENT SEMANS

OPINION BELOW

The opinion of the District Court (R. 634) is reported at 210 F. Supp. 675. The report of the Interstate Commerce Commission (R. 10) is reported at 317 I.C.C. 255. The report and recommended order of the Commission's Hearing Examiner appear at R. 25.

JURISDICTION

This suit was brought by appellees under 28 U.S.C. Sec. 1336, 1398 and 2321-2325 to set aside an order of the Interstate Commerce Commission. Hearing was held before a three-judge court convened under 28 U.S.C. Sec. 2284. The judgment of the District Court in setting aside the Commission's order and permanently enjoining appellant from

acting thereunder was entered on October 19, 1962. On December 14, 1962, a notice of appeal to this Court was filed in the District Court.

The jurisdiction of this Court to review the decision below is conferred by 28 U.S.C. Sec. 1253 and 2101 (b). This Court noted probable jurisdiction of the appeal on May 13, 1963.

QUESTIONS PRESENTED

1. Does Section 13a(2) of the Interstate Commerce Act empower the Interstate Commerce Commission to discontinue the operation of an intrastate passenger train which is operated at a deficit without the Commission taking into consideration the freight profits of that particular line and its over-all profits?

2. Did the District Court correctly conclude that the decision of the Interstate Commerce Commission ordering the discontinuance of the trains involved was not in accordance with law and not supported by substantial evidence?

STATUTE INVOLVED

Section 13a(2) of the Interstate Commerce Act, 72 Stat. 472, 49 U.S.C. Sec. 13a(2), reads as follows:

"Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to

effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce.***"

STATEMENT

On July 8, 1959, Southern Railway Company (hereinafter called Southern) filed a petition with the North Carolina Utilities Commission for an order permitting it permanently to discontinue the operation of passenger trains 13 and 16 between Greensboro and Goldsboro, North Carolina. Actually, only one train is involved, it being designated No. 16 in one direction and No. 13 on the return trip. This train furnishes the last remaining railway passenger service between these two towns, all previous passenger trains having been discontinued by Southern. Following numerous protests and a hearing, the State Utilities Commission denied the petition, and Southern appealed to the Wake County, North Carolina, Superior Court, which upheld the Utilities Commission's order. Southern then appealed to the North Carolina Supreme Court which affirmed the Superior Court and the Utilities Commission, in a unanimous decision handed down February 3, 1961. *State of North Carolina, ex rel, Utilities Commission, et al, v. Southern Railway Company*, 254 N.C. 73, 118 S.E. 2nd 21 (1961).

On April 6, 1961, Southern filed a petition with the Interstate Commerce Commission (Finance Docket No. 21563) again seeking authority to discontinue the operation of these trains pursuant to the provisions of Section 13a(2) of the Interstate Commerce Act. The I.C.C. referred the petition to William J. Gibbons, Hearing Examiner, who held a hearing at Raleigh, North Carolina, July 11, 1961, through July 14, 1961.

On October 27, 1961 (service date) the Examiner filed his report together with the recommendation that the I.C.C. issue an order allowing Southern's petition. (R. 24-42).

Exceptions to the Examiner's report and recommended order were duly filed by all of the appellees herein, and the matter was referred to Division 3 of the I.C.C.

By order bearing service date of July 2, 1962, Division 3 adopted the rulings, findings and conclusions of the hearing Examiner. This order authorized Southern to discontinue the operation of the passenger trains in question.

Then, on August 18, 1962, this action was instituted by appellees in the United States District Court to set aside the Interstate Commerce Commission's order, as previously mentioned.

Southern operates two deficit-producing passenger trains between Greensboro and Goldsboro, North Carolina. The distance between the two points is 129.1 miles. Train No. 16 operates eastbound in the morning from Greensboro to Goldsboro, and Train No. 13, consisting of the same equipment, operates in the reverse direction in the late afternoon. (R. 73).

The Examiner found that the operation of the trains resulted in a net loss to Southern and that the discontinuance of the passenger service would result in annual savings "considerably in excess of \$90,589 a year" (R. 39). He also found that the public demand for the service was slight, and had sharply declined since 1948, despite the high density of population in the area traversed by the two trains. Thus, in 1948 both trains carried 56,739 passengers, an average of 77.51 per trip, compared to 14,776 passengers in 1960 or an average of 20.19 per trip (R. 31). The Examiner found that adequate alternative means of transportation were available to the public. Based upon these findings, the Examiner concluded that the present and future public convenience and necessity permit the discontinuance of passenger trains 13 and 16 and that the continued operation of the trains would constitute an unjust and

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undue burden on the Southern's interstate operations and upon interstate commerce. Accordingly, he recommended that the petition be granted (R. 42).

Upon the filing of exceptions and replies to the Examiner's report, the matter was considered by Division 3 of the Commission, consisting of three Commissioners. The Division issued a report dated June 27, 1962 (R. 10) in which it set forth its views on the issues raised by the exceptions and also adopted the findings and conclusions of the Examiner. The Division further found (R. 17):

"From a review of the evidence of record we conclude that the cost to the carrier of operating the trains involved greatly exceeds the benefit derived from said trains by the traveling public; that existing alternate transportation service by rail, bus, airline and motor truck are reasonably adequate for the transportation of passengers, and express; that the public will not be materially inconvenienced by the discontinuance of the service here involved; that the savings to be realized by the carrier outweigh the inconvenience to which the public may be subjected by such discontinuance; that such savings will enable the carrier more efficiently to provide transportation service to the public which remain in substantial demand; and that the continued operation of trains Nos. 13 and 16 would constitute a wasteful service and would impose an undue burden on interstate commerce."

A petition seeking reconsideration by the entire Commission was denied on August 6, 1962. At the same time, it was provided that the order of the Commission authorizing the discontinuance of passenger trains 13 and 16 (which had been postponed pending disposition of the petition) should become effective 15 days after August 8, 1962 (R. 20-21).

On August 18, 1962, the State of North Carolina and other protestants instituted an action in the district court seeking to set aside and enjoin the order of the Commission. There-

after, on October 19, 1962, the three-judge court issued its opinion and decree (R. 634). The decree (1) set aside and enjoined the Commission's order; (2) required the Southern to reinstate the service which had been discontinued pursuant to the Commission's order, and (3) "permanently and perpetually enjoined and restrained (the Southern) from discontinuing passenger trains, Nos. 13 and 16, between Greensboro and Goldsboro, North Carolina" (R. 658).

The Court stated in its opinion that, "This court is specifically authorized by the Administrative Procedure Act (5 U.S.C.A. 1009) to 'hold unlawful and set aside agency action findings and conclusions found to be arbitrary, capricious . . . or otherwise not in accordance with law . . . (or) unsupported by substantial evidence.' By the provisions of Title 28, sec. 1336, jurisdiction is accorded to 'set aside (or) annul any order of the Interstate Commerce Commission.' Pursuant to this authority, we hold unlawful and set aside the action of the Interstate Commerce Commission authorizing the carrier to abandon its passenger service. We also hold unlawful and set aside the ultimate conclusions of the Interstate Commerce Commission that the service in question constitutes an undue burden on interstate commerce and that the present or future public convenience and necessity permits such discontinuance. We hold that such action and conclusions are arbitrary and capricious because not in accordance with law and because not supported by substantial evidence." (R. 656-657)

SUMMARY OF ARGUMENT

One of the questions involved in this matter turns on the interpretation of Section 13a(2) of the Transportation Act of 1958 insofar as that section governs the discontinuance of intrastate passenger trains wholly within the boundaries of a single State. Section 13a(2) empowers the Commission to order the discontinuance of a "train" operated "wholly within the boundaries of a single State" if the state has first refused permission or failed to act upon an application within 120 days, and if the Commission, after a public hearing, finds (1)

that discontinuance of the train is consistent with the present or future public convenience and necessity, and (2) that the continued operation of the train will constitute an unjust and undue burden upon the interstate operations of the carrier or upon interstate commerce.

In enacting Section 13a(2) Congress did not intend that interstate railroads might discontinue loss-producing intrastate passenger trains which are operated at a deficit without the Commission taking into consideration the freight profits of that particular line and its over-all profits.

That in enacting Section 13a(2) Congress did not intend that the Interstate Commerce Commission should make a finding or issue an order which is not warranted in law, or is not based upon substantial evidence in the record. The conclusions drawn by the Court below were that such actions and conclusions of the Interstate Commerce Commission "are arbitrary and capricious because not in accordance with law and because not supported by substantial evidence." (R. 656-657).

ARGUMENT

I.

SECTION 13a(2) OF THE INTERSTATE COMMERCE ACT DOES NOT EMPOWER THE INTERSTATE COMMERCE COMMISSION TO DISCONTINUE THE OPERATION OF AN INTRASTATE PASSENGER TRAIN WHICH IS OPERATED AT A DEFICIT WITHOUT THE COMMISSION TAKING INTO CONSIDERATION THE FREIGHT PROFITS OF THAT PARTICULAR LINE AND ITS OVER-ALL PROFITS.

The Hearing Examiner and the Interstate Commerce Commission based their conclusion that the continued operation of these last passenger trains would constitute an unjust and undue burden upon the interstate operations of Southern and upon interstate commerce solely on Southern's evidence that

the two trains operated at a net financial loss. The over-all soundness of the railroad and its lucrative freight operations over this same line were totally disregarded. In the Examiner's report appears the following:

"At the hearing, protestants emphasized the fact that petitioner's net railway operating income in 1960 was \$36,107,599, and that its net income alone from freight operations on the line between Greensboro and Goldsboro averages \$630,000, thus contending that the over-all prosperity of the petitioner, as well as its intrastate freight operations, must be given effect in the disposition of the issues involved herein. With these contentions, the Examiner disagrees." (R. 37-38)

Division 3 of the Interstate Commerce Commission followed the Examiner's position and repeated the rule as follows:

"Nowhere in Section 13a(2) or elsewhere in the law is there any requirement that the prosperity of the intrastate operations of the carrier as a whole, or any particular segment thereof must be given effect in determining whether the operation of an individual intrastate train imposes an unjust and undue burden on interstate commerce. To hold otherwise would be contrary to the apparent intent of the Congress." (R. 14)

On appeal the three-judge District Court took a different view. The Court stated:

"The Examiner and the ICC have misconstrued the intent of Congress and the contentions of the plaintiffs, as well as the applicable law. It is a non-sequitur to say that 'by analogy, interveners' plaintiffs view would require a determination that overall losses have resulted on traffic handled over the line.' Plaintiffs do not contend—and it is not the law—that there can be no discontinuance unless freight and passenger service considered together show a net loss. Rather, plaintiffs' contention is that the \$630,000 freight profit is a factor to be

considered in determining whether the \$90,000 passenger loss on the same line constitutes an unjust and undue burden on interstate commerce. Whether there is a net profit or net loss is not necessarily the controlling factor, but the amount of the net profit or net loss is a factor to be considered. Whether the operation of the passenger service is a burden on interstate commerce and whether there is any longer a public need sufficient to justify the financial losses involved are questions not susceptible of scientific measurement or exact formulae but are questions of degree and involve the balancing of conflicting interests. All material factors bearing on the questions must be taken into account, the ICC must consider a fair picture. Because Congress has expressed concern over the financial conditions of railway passenger service does not justify a reading of their intent to mean that if a segment of passenger service shows a loss, it is unnecessary to consider all other relevant factors, including the freight profits on the same line, to determine whether the loss constitutes a burden on interstate commerce.

"We hold, then, that the Commission should have considered the relative amount of profit on one service and loss on the other in making its finding of whether the passenger service here involved constituted an undue burden on interstate commerce." (R. 646-647)

It is respectfully submitted that the three-judge District Court's interpretation is correct; that the Hearing Examiner was not correct; and that the over-all prosperity of the carrier and the total operations of the carrier on the line involved should have been considered.

At the time Section 13a(2) was adopted in 1958 railroads in general were in financial difficulty throughout the country. Part of this difficulty resulted from passenger operation deficits. Apparently, Congress felt there was some danger that local state commissions might be reluctant to grant discontinuances of trains due to local prejudice; it therefore felt that some control by a Federal regulatory body should be in

the law over intrastate operations. (See 1958 U. S. Code Cong. and Adm. News, Vol. 2, p. 3456). However, Congress did not delegate this authority exclusively to the Interstate Commerce Commission. It required railroads first to apply to the state commission and then laid down careful prerequisites for the guidance of the Interstate Commerce Commission before they could reverse the decision of the State regulatory body. The words "unjust" and "undue" clearly indicate that Congress intended that the mere fact that a particular part of the operation was operating at a loss would not justify discontinuance of the train itself. If there is a burden, it must be "unjust", and it must be "undue". It is submitted that in order to determine whether a particular burden is undue or unjust the over-all situation of the railroad and especially the entire operations of the railroad over the particular line must be considered. In this light we find the following undisputed facts from Southern's own witness:

1. The maximum loss claimed by Southern on these two passenger trains for 1960 is \$117,641 before allowing any deductible loss for Federal and State income taxes. It is only \$49,408.82 after allowing a 52% deduction for Federal income tax and a 6% deduction for State income taxes. (R. 365).

2. On this same line of tract the railroad in 1960 made a net freight operating profit of \$630,000. (R. 374).

3. The over-all profit of Southern Railway in 1960 for its entire system was \$36,107,599 after the payment of all taxes and all operating expenses. (R. 132-330).

Our position in this respect is supported by the case of *Chicago Milwaukee St. P. & P. Railroad Company vs. Illinois*, 355 U.S. 300 2 L. Ed. 2d 292, 78 S. Ct. 304 (1958). This case involved a decision made by the Interstate Commerce Commission under 49 USC Sec. 13(4) which authorized the ICC to prescribe intrastate fares if it found that "...any such (existing intrastate) fare . . . causes . . . any undue, unreasonable or unjust discrimination against interstate . . .

commerce." The interstate Commerce Commission had found that the Milwaukee road's 1954 passenger revenues from the Chicago suburban commuter service involved fell short by \$306,038.00 of meeting the out-of-pocket cost of the service. On this basis the ICC concluded that the existing intrastate fare caused undue discrimination against interstate commerce and prescribed fares to produce enough additional annual revenue to eliminate the out-of-pocket expense. The State of Illinois brought suit to change the ICC order. In reversing the ICC ruling this Court stated:

"This case presents once again the problem of adjusting state and federal interests in the regulation of intrastate rates. *These intrastate rates are primarily the State's concern and federal power is dominant, only so far as necessary to alter rates which injuriously affect interstate transportation*' . . . Thus, whenever this federal power is exerted within what would otherwise be the domain of the state power the justification for its exercise must '*clearly appear*' . . . The statute provides a practical method of minimizing the inevitable irritations inherent in the conflict by requiring the ICC to notify the State whenever there is brought before it any fare imposed by state authority. In addition, the ICC may confer with the state regulatory authority or may hold joint hearings with the state agency when the State's rate-making authority may be affected by the action taken by the ICC. 49 USC §13(3).

In the instant case the ICC interfered with suburban commuter rates—intrastate rates peculiarly localized in impact upon the Chicago suburban community. In substance, the ICC found that because this single segment of the Milwaukee Road's intrastate operations in Illinois did not meet out-of-pocket costs, there was an undue discrimination against the road's interstate operations, without regard to the contribution of other Illinois intrastate revenues, freight or passenger, concerning which both the record and the findings are entirely silent.

"We think this is a case where the ICC cannot be sustained in altering intrastate rates merely because the Chicago suburban commuter traffic—of the Milwaukee Road's total intrastate traffic, freight and passenger—is not remunerative or reasonably compensatory . . . *The limited and exceptional power asserted by §13(4) over intrastate rates must be exercised with 'scrupulous regard for maintaining the [primary] power of the state in this field'* . . . It is, of course, desirable that each particular intrastate service should as nearly as may be pay its own way and return a profit—but the State Commission, not the ICC, has responsibility in the first instance to achieve that desired end. Passenger deficits have become chronic in the railroad industry and it has become necessary to make up these deficits from more remunerative services. The ICC has recognized this practical reality of today's railroading and it has changed its rate-fixing policy so that if interstate passenger service inevitably and inescapably cannot bear its direct costs and its share of joint or indirect costs, the ICC feels compelled in a general rate case to take the passenger deficit into account in the adjustment of interstate freight rates and charges . . . An equally broad power must be conceded to a state commission in the exercise of its primary authority to prescribe and adjust intrastate rates.

"In view of that policy we do not think that the deficit from this single commuter operation can fairly be adjudged to work an undue discrimination against the Milwaukee Road's intrastate operations *without findings which take the deficit into account in the light of the carrier's other intrastate revenues from Illinois traffic, freight and passenger.*" (Emphasis added)

Also see: *Public Service Com. of Utah v. United States*, 356 U.S. 421, 78 S. Ct. 796, 2 L. Ed. 886 (1958); *North Carolina v. United States*, 325 US 507, 89 L. Ed. 1760, 65 S. Ct., 1260 (1945); *Florida v. United States*, 282 US 194, 75 L. Ed. 291, 51 S. Ct. 119 (1931); *Atlantic C. L. R. Co. v. North Carolina Corp. Com.*, 206 US 1, 27 S. Ct. 585, 51 Law Ed. 933 (1906).

In an annotation in 10 A.L.R. 2d 1143 the following statement appears:

"The great weight of the decisions, both court and commission, is to the effect that, in considering the question whether or not a public utility company should be compelled to continue the operation of a branch line, the entire revenues of the system are to be considered, and not merely the direct return from the branch line itself; . . ."

If in determining whether to by-pass a state commission in raising passenger fares, the ICC was required to consider the carrier's other intrastate revenues from freight, then *surely the ICC must do the same thing in deciding whether to reverse a state decision and allow passenger trains to be abandoned*. This the ICC patently did not do in this case.

It seems strange indeed that the ICC as shown by the record in this case considers losses from the operation of passenger trains in granting increases in freight rates, but on the other hand refuses to consider freight profits in allowing passenger trains to be discontinued because of alleged financial losses. It was conceded by Southern at the hearing in this case that losses on passenger operations were taken into consideration by the State Utilities Commission and the ICC on occasions in granting increases in freight rates. (R. 223, 330, 361).

The appellants seek to take comfort in the legislative history surrounding the enactment of Section 13a(2). The *Chicago* and *Utah* cases, *supra*, involved the construction of Section 13(4) and were decided shortly prior to the time Congress was considering the Transportation Act of 1958. Prior to 1958 Section 13(4) authorized the ICC to prescribe intrastate fares if it found that the rate "causes . . . any undue, unreasonable, or unjust discrimination against interstate . . . commerce." In 1958, following the *Chicago* and *Utah* decisions, Congress amended Section 13(4) to provide that the determination could be made "(without a separation of interstate and intrastate property, revenues and expenses,

and without considering in totality the operation or results thereof of any carrier . . . wholly within any state)". This amendment has been construed to mean that a decision of the Interstate Commerce Commission will not be reversed because there is insufficient evidence of the total intrastate operations of the carrier in the record. However, when such evidence is in the record the ICC would still be required to give it consideration. *Utah Citizens Rate Assoc. v. United States*, 192 F. Supp. 12 (D. Utah 1961) *affd.*, per curiam 365 U.S. 649, 81 S. Ct. 834, 5 L. Ed. 2d 857 (1961). Its findings must still be supported by substantial evidence "on the record considered as a whole."

Furthermore, Congress adopted Section 13a(2) at the same time Section 13(4) was amended. If Congress had intended that the ICC should not consider all relevant factors in regards to the intrastate line in discontinuance cases it would certainly have included the same language in Section 13a(2) as was added to Section 13(4) by amendment. Undoubtedly, Congress realized that the discontinuance of an intrastate train was a matter that should normally be left to the individual states and in which the ICC should intervene only for the most compelling reasons. The appellants seek to have this Court do that which Congress has refused to do and are, in effect, asking this Court to rewrite Section 13a(2). It is respectfully submitted that this Court should not write into a statute that which Congress refused to do.

At the time Section 13a(2) was enacted, many members of Congress expressed grave concern over further Federal control in this field. The fact that state regulatory agencies were better suited to exercise jurisdiction over such matters was brought out. (See supplemental views of Messrs. Williams, Roberts, Moulder, Flynt, and Loser to H.R. 12833 set out on pages 3475-3478, 1958 U.S. Code & Cong. News, Vol. 2). Congress rejected the "net loss" provision that would have authorized the discontinuance of any rail passenger service which operated at a "net loss." This provision would have achieved the same result as the parenthetical addition that appears in 13(4), and it would have enabled the ICC in this

case to permit the discontinuance on the basis used by the Hearing Examiner, namely, that the "net" deficit from the operation of this passenger service justifies removal thereof. The Congress, however, rejected this proposed change. Over the objection of some, the ICC was given limited authority in regards to the discontinuance of totally intrastate rains. However, the requisites for intervention by the ICC were explicitly set forth in language that make it abundantly clear that Congress intended this power to be exercised only under the most compelling circumstances and after considering all relevant factors.

It is of particular legal significance that the proffered "net loss" amendment was rejected (and it was rejected only after careful consideration by a conference committee of both houses of Congress following the Senate's adoption of the provision). Legislative action upon proposed amendments is one of the most available extrinsic aids in construing legislative intent. *Southerland, Statutory Construction*, 3rd Ed., Section 5015, Vol. 2, p. 506, where the following statement appears:

... "Both the state and federal courts will refer to proposed changes in a bill in order to interpret the statute into which it was finally enacted. * * * Generally the rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment. ..."

Among the several cases cited by *Southerland* on this point is *United States v. Great Northern R. Co.*, 287 U.S. 144, 155, 77 L. Ed. 223, 53 S. Ct. 28 (1932).

Having rejected an attempt to change the law, the criteria which remain as controlling in a proceeding of this kind are: (1) The character and population of the territory served; (2) the public patronage or lack of it; (3) the facilities remaining; (4) the expense of operation as compared with the revenue from it; and (5) the operations of the carrier as a whole."

Utilities Commission v. Southern Railway Company, 254 N.C. 79, 118 S.E. 2d 25 (1961).

Applying these criteria to the facts of this case, we see:

1. The area involved lies in the industrial heart of North Carolina. The population figures speak for themselves.

2. Considering the difficulties involved, the patronage of the trains is remarkable and it is apparently increasing.

3. There will be no remaining rail passenger facilities.

4. There is a small loss regarding the passenger aspect of the line, but Southern's over-all operation on the line is profitable and contributes to the well-being of the company.

5. The over-all operations of Southern are extremely profitable and the carrier is in excellent financial condition.

As pointed out by this Court in the recent case of *Chicago, Milwaukee, St. P. & P. Railroad Co. v. Illinois*, supra, this is a situation where Congress is stepping into a role where the control is primarily that of North Carolina and the need must "clearly appear." This is totally intrastate service. North Carolina is primarily and vitally concerned as are her people and cities. There must be some over-riding reason for a Federal Regulatory Agency to step in and take control. None appears.

There is no intimation that through the years the State of North Carolina has imposed any undue or harsh burden on Southern or any other railroad. On the contrary between 1951 and 1956, of 44 requests for discontinuances of passenger service, 42 were approved by North Carolina. 1958 U.S. Code Cong. & Adm. News, Vol. 2, p. 3470.

Southern's claimed passenger loss on this line of \$117,641 for 1961 does not take into consideration the revenue produc-

ed by these passengers from off-line revenues or the fact that 58% of the loss is absorbed in taxes (52% Federal, 6% State). Considering this and the fact that the railroad made \$630,000 from its freight business in 1960 on this identical line and had a net profit on its entire system of \$36,107,599, the loss becomes inconsequential.

In considering whether the equities of the case lie with Southern, it should be remembered that Southern leases these tracks from the North Carolina Railroad Company, owned entirely or in the main by the State of North Carolina. The lease clearly contemplates both passenger and freight service. There can be no doubt that when the North Carolina Railroad Company in 1895 entered into its lease with the Southern, the continuation of the passenger service was certainly contemplated, and this obligation formed an integral part of the consideration for the lease. To allow Southern to abandon this last passenger service while maintaining its lucrative freight operation over the same line would allow it to escape the contractual obligations imposed upon it under the lease, and its obligation to the public.

In a somewhat similar situation, Judge John J. Parker, U. S. Circuit Judge and later Chief Judge of the 4th District, had the following comments to make in affirming a decision denying a railroad application to discontinue passenger service between two towns in South Carolina.

"Even if there were no charter obligation with respect to maintaining passenger service over this entire line of railroad, we do not think that the order of the Commission denying to the company the right to discontinue all passenger service on this portion of the line could be held arbitrary and unreasonable so as to fall under the condemnation of the due process or the equal protection clause. The State of South Carolina, for the convenience and welfare of its people, had chartered this line of railroad from Charleston to Augusta. People along the line had been served by it for over a hundred years. The discontinuance of the trains in question would leave those

on a large part of the line without the benefit of passenger service and without the benefit of the express and mail service dependent upon the operation of passenger trains. The company intends to use the Branchville-Augusta portion of the line for the hauling of freight because of its 'convenience value,' as explained by one of the witnesses. We cannot say that it was arbitrary and unreasonable for the Commission to consider the 'convenience' of the communities served and order that the company continue to maintain the customary service ordinarily afforded by railroad companies over it. . . .

"Plaintiff is, of course, interested primarily in using the road as an integral part of its great interstate system. It accordingly uses the 16-mile portion between Branchville and Charleston, runs excellent trains over it and has no idea of abandoning passenger service so far as that portion is concerned. Likewise, it proposes to use the Branchville-Augusta portion for the convenience of its system in the hauling of freight. The Commission, however, must look to the interest of the people of South Carolina, as well as to that of the railway system; and we cannot think that, in the light of the purpose for which the charter was granted, it is arbitrary and unreasonable action to require that passenger service be continued over the entire line, and not merely on the portion where operation is to the advantage of plaintiff's system. 'The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give. An important purpose of state supervision is to prevent such discriminations.' *United Fuel Gas Co. v. Railroad Com. of Kentucky*, 278 U.S. 300, 49 S. Ct. 150, 152, 73 L. Ed. 390.

"... It must be remembered that the issue before the Commission was not whether the plaintiff should be required to furnish more or less passenger service over

the portion of the line in question, *but whether it should be permitted to abandon all passenger service over it.*" (Emphasis supplied) *Southern Railway Co. v. South Carolina Public Service Commission*, 31 F. Supp. 707, 713-714.

We submit that the Court below correctly construed §13a(2) to require a consideration of all relevant factors before the ICC could order the discontinuance of a totally intrastate train. Any other construction would raise grave Constitutional questions and run contra to the intent of Congress as plainly expressed in the very language of §13a(2).

H.

THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE DECISION OF THE ICC PERMITTING THE DISCONTINUANCE OF THE TRAINS IN QUESTION WAS NOT IN ACCORDANCE WITH THE LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Unlike the Hearing Examiner, the District Court considered the record as a whole. While the Examiner stated that he gave consideration to the petition, the evidence introduced at the hearing, the contentions of the parties, it is clearly apparent that he did not consider ALL of the evidence. The District Court was correct in its view of the law requiring consideration of the record as a whole.

The appellees fully recognize the rule by which the Court may not review the wisdom of the Commission's findings and may not substitute its judgment for that of the Commission. They do respectfully submit, however, that the District does have the power and the duty to review the record, the entire record, in order to determine whether or not there is evidence substantial enough to support the Commission's findings and conclusions. The Court followed the proper procedure in reviewing the Commission's action, as shown in the Court's own language. (R. 656), as follows:

"Upon our examination of the entire record, in the light of the applicable principles of law, we fail to find substantial evidential facts to support the Commission's holding that the service in question constitutes an undue burden on the interstate aspects of the carrier's operations. The basic facts are not in conflict—nor is there any real conflict in the evidence offered by the parties. The question is whether there is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126 (1933); *Davis, Administrative Law Treatise*, Vol. 4, p. 186. We think there is not."

This Court has consistently defined the scope of the District Court's review of Commission findings and has consistently held that if the Commission's action is not in accordance with law, or if based on findings unsupported by substantial evidence on the record considered as a whole, OR if the reviewing Court, on consideration of the entire evidence is left with the definite and firm conviction that a mistake has been committed, the Commission's action is clearly erroneous and its order may be set aside as was done in this case. *Denver Chicago Transport Co. v. United States*, U.S.D.C. (D. Colo., 1960), 183 F. Supp. 785, 787; *United States v. U. S. Gypsum Company*, 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746.

It is perfectly apparent that the Commission's facts are unsupported by substantial evidence on the record considered as a whole; that, the Commission considered only the evidence tending to support the finding and summarily dismissed and rejected, without consideration, the evidence militating against the finding.

The Examiner's unqualified acceptance of practically all of Southern's contentions on the question of public convenience and necessity are vividly illustrated by a comparison of his finding with the record, when all of the evidence on this point is considered. All of Southern's testimony bearing upon

this point dealt with statistics designed to show the little use being made of these trains. Even Southern's own principal witness, its chief statistician, admitted that his figures did not show anything with respect to the need of these trains. (R. 340).

The Examiner's finding and conclusion on this point are as follows:

"That some need exists for the service of trains 13 and 216 is shown by the testimony of the opposition witnesses. Their need, however, is relatively insubstantial when viewed in the light of the density of the population of the area served and the patronage that is potentially available. Only scattered opposition appeared at the hearing in this proceeding and at the hearing held by the North Carolina Commission and most of the opposition came from Durham, with virtually none east thereof. It is obvious that the needs of these few would be insufficient to justify the institution of a new service. Conversely, it should be equally apparent that under the test of public convenience and necessity, their needs no longer justify the continuation of existing service." (R. 40).

The appellees respectfully urge that the Examiner committed gross error in treating the appellees' evidence of public convenience and necessity as "scattered opposition." We respectfully submit that merely counting the witnesses who appeared at the hearing is not the proper way to determine the question of public convenience and necessity. The appellees presented 21 protesting witnesses at the hearing before the Examiner, two of which had previously testified at the hearing before the State Commission; in addition, 16 of the protesting witnesses testified at the prior hearing as to the public convenience and necessity. (The record in the prior hearing was incorporated by the Examiner into the record in this proceeding.) This "scattered opposition" is greater than the 26 public witnesses who testified in the case of *New York Central Railroad Co., Discontinuance of Service, St. Lawrence Division*, 312 ICC 4, in which the

Commission concluded that the continued operation of eight trains was required by the public convenience and necessity. That the principal public convenience presently afforded by the trains arises from the interconnecting service at Greensboro with the north-south trains on Southern's main line so as to furnish convenient over-night sleeper service to New York and other east coast cities, is inescapable if consideration is given to the entire record. The evidence on this point is clear, it is undisputed, and it is shown at no less than 30 places in the record. (R. 135, 144, 168, 173, 183, 191, 214, 217, 222, 225, 228, 229, 377, 380, 384, 471, 480, 485, 490, 497, 502, 510, 524, 539, 543, 547, 553, 562, 580, 587, 590 and 592).

The testimony of witnesses who actually appeared and testified at the hearing with respect to their own personal need and use of these trains was undisputed and should have been given full consideration by the Examiner. Furthermore, many of these witnesses testified as to their personal knowledge of many other persons who use and need these trains. This was positive, undisputed evidence of the additional need and use of these trains, but the Examiner did not even purport to consider this evidence. His report on its face, shows that he purported to consider only the "scattered opposition" (which) *appeared* at the hearing. The testimony of the witnesses who actually appeared at the hearing and who testified from their own personal knowledge, of the use and need of these trains by others appears at more than 20 places in the record. (R. 174, 179, 184, 191, 210, 214, 229, 283, 470-471, 481, 524, 538, 553, 561, 563, 568-571, 580, 586, 589, 591 and 593). The Examiner did not even purport to consider this evidence, and we respectfully submit that his failure to do so was "clearly erroneous."

Likewise, the Examiner finds that "for most of the major communities alternate passenger service is available . . .". This finding is unsupported by substantial evidence in the record when considered as a whole. While it is true other modes of transportation are available, to some degree, many of the communities will be left without any rail passenger service; in none of the communities would there remain any

direct through-sleeper service to points on Southern's main line. Furthermore, many of the witnesses testified that the alternate passenger service suggested by Southern was inadequate to suit the needs of the area served. (R. 383, 490-491, 500, 502, 510, 543, and 592). Here again, the Examiner merely adopted Southern's unsupported contention in the face of direct, positive evidence to the contrary, all of which was dismissed by the Examiner without consideration and without an explanation of the basis for rejecting it.

The appellees, of course, realize that the administrative agency is the sole one to determine *weight* of evidence, but the law has determined that the administrative agency must give *consideration* to the *whole record*. *Universal Camera Corporation v. N.L.R.B.*, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1950).

The manner in which the Hearing Examiner considered (as distinguished from weighing) the evidence on the question of the effect of the proposed discontinuance upon industrial development of the area shows clearly the Examiner's error in adopting Southern's contentions and rejecting consideration of the positive evidence against Southern's contention. The Examiner's finding on this point is as follows:

"One witness *expressed concern* about express service to and from Elon College, *while others feared* that the discontinuance of these trains would hamper the industrial development of the area. Through oral testimony, *petitioner denied* that the presence or absence of rail passenger service has any bearing on industrial development". (Emphasis supplied). (R. 34).

The Examiner's description of Southern's evidence on this point is accurate. The petitioner (Southern) did *deny* that the presence or absence of rail passenger service has any bearing on industrial development. The only witness for Southern who testified on this question was Mr. W. R. Belfield (R. 154-164). He stated that he personally did not know of any industry lost in this area for lack of rail passenger

service. (R. 156). He stated that he had not had any use for these trains and that he had not used them in promoting industrial development. (R. 157). He made other similar statements, all of which were to the effect that he had no information on the subject, but he did not offer any positive evidence of any kind as to whether or not the discontinuance of these trains would affect industrial development and expansion. Appellees respectfully submit that Mr. Belfield's testimony is not evidence—it certainly is not substantial evidence sufficient to support Southern's contention and the Examiner's finding. Furthermore, he made the point that industries had located in the area subsequent to the discontinuance of two previous sets of trains. On cross-examination, he made the following significant statement: "At the time the industry to which (he) had referred located on the line of Trains 13 and 16 THERE WAS PASSENGER SERVICE AVAILABLE. (R. 160). (Emphasis supplied). Instead of being real evidence, Mr. Belfield's testimony, when considered in its entirety, is nothing more than a profession of ignorance on the point to which he testified. Yet his testimony forms the sole basis of the Examiner's finding and conclusion on this point.

If we look at the whole record and examine all of the evidence on the question of the effect of the discontinuance upon industrial development, we can see the gross error in law committed by the Examiner in his failure to consider this evidence. Mr. Justin Kingston, sole owner and stockholder of Kingston Mills, testified that, at the time of the hearing, his company was then building and locating a plant in Durham, one of the stations on the line involved. (R. 383). The decision as to where to locate this plant was his exclusively, as sole owner, and he testified that "what particularly attracted (him) was this train service." (R. 382). In fact, he stated that to be "... one of the primary reasons I located this plant here ..." This is not opinion testimony, it is not a profession of ignorance, it is direct, positive, uncontradicted testimony which was improperly disregarded by the Examiner. One witness, Dr. Thomas Powell, a man with an investment of one million dollars in the biological

supply business in Elon, N. C., (one of the stations on this line) testified that the discontinuance of these trains might even force his business to leave North Carolina. (R. 417).

Mr. George Parks, President of Golden Belk Manufacturing Company, testified that he had personally participated in selecting a location for an expansion of his company and that one of the considerations given in making the decision was the availability of rail passenger and freight service. (R. 524).

Another witness, executive director of Durham's Committee of One Hundred, a committee formed to attract industrial development, testified that he personally interviewed prospects himself and that he had always been asked to name the significant connections and the departures of the passenger trains. (R. 580).

The appellees do not contend that the Court may re-weigh any of the above mentioned testimony, but appellees respectfully submit that the Examiner should have given full consideration to all of this testimony rather than to dismiss it with the simple statement that this positive evidence, based on personal knowledge, constituted simply an expression of concern. The Commissioners' findings concerning this evidence appears later in the Examiner's report, (R. 41) and it is patently unsupported by substantial evidence in the record, and it is directly opposite from all of the real, positive, evidence in the record. His finding is as follows:

"While industrial expansion may, under certain circumstances, depend on rail passenger service, it would appear that industry is much more concerned about rail freight service than rail passenger facilities."

The appellees respectfully contend that the Examiner's findings are not supported by substantial evidence and that the Commission's order, based upon the Examiner's report and recommendations, is not in accordance with law and was, therefore, properly set aside by the District Court. Although the Examiner's report contains passing reference to portions

of the evidence unfavorable to Southern's position, it is abundantly clear that his findings and conclusions are not in accord with the law as it has existed since the Administrative Procedure Act (the substantial evidence rule) was amended by adding the words, "... on the record considered as a whole ..." The legislative history of that amendment was discussed by the Court in the *Universal Camera* case, supra. It is clear, with this amendment, that it is not enough that evidence, when considered by itself and viewed in isolation, substantiates the findings. The importance of the requirement that consideration must be given to the evidence on the record considered as a whole is shown in the following language of the Court in the *Universal Camera* case:

"Whether or not it was ever permissible for Courts to determine the substantiality of evidence supporting a labor board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."

As the Court below pointed out, the "... question is whether there is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. v. N.L.R.B.* 305 U. S. 197, 229, 59 S. Ct. 205, 217, 83 L. Ed. 126 (1933); *Davis, Administrative Law Treatise*, Vol. 4, p. 186. We think there is not."

Substantial evidence is such as affords a substantial basis of fact from which the fact in issue can be reasonably inferred. *N.L.R.B. v. Columbian Enameling and Stamping Company*, 306 U. S. 292 (1939).

Substantial evidence must be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence must have rational probative

force; it must carry conviction; it must be more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. *Del. E. Webb Construction Company v. N.L.R.B.*, 196 F. 2d 702 (1952).

Moreover, the substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is what is meant by consideration being given to the whole record. *Universal Camera Corporation v. N.L.R.B.*, 340 U. S. 474 (1951). And the test is not satisfied by evidence which gives equal support to inconsistent inferences. *Eastern Coal Corporation v. N.L.R.B.*, 176 F. 2d 131 (1949).

What is meant by Public Convenience and Necessity? The accepted definition of these terms is stated as follows in the case of *S.A.L.R. Co. v. Commonwealth* 71 S.E. 2d 146 (Va. 1952):

"Necessity means reasonably necessary and not absolutely imperative . . . the convenience of the public must not be circumscribed by holding the term 'necessity' to mean an essential requirement . . . It is necessary if it appears reasonably requisite, is suited and tends to promote the accommodation of the public."

The Iowa Court, in *Application of Transport, Inc. of South Dakota*, 64 N.W. 2d 313. (Iowa 1954) held that the term "convenience and necessity" implies a determination of public interest based upon the weighing of factors having relation to an adequate and efficient transportation system.

Quoting with approval from *Chesapeake & Ohio R. Co. v. Public Ser. Com. of W. Va.*, 242 U. S. 603, 37 S. Ct. 234, 61 L. Ed. 520, p. 522 (1917), the opinion continues:

"One of the duties of a railroad doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and enjoyment of the powers and privileges granted by the state and endures so long as they

are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided because it will be attended by some pecuniary loss."

See also the following cases: *Chicago, M., St. P. & Pac. R.R. v. Illinois*, 356 U. S. 906, 2 L. Ed. 573, 78 S. Ct. 665 (1958); *Missouri Pac. v. Ry. v. Kansas, ex rel. R.R. Comrs.*, 216 U. S. 262, 54 L. Ed. 472, 30 S. Ct. 330 (1909).

What then is the public convenience and necessity to be served by this railroad?

The record viewed as a whole discloses that the two trains in question are the last remaining east-west passenger trains between Goldsboro and Greensboro, North Carolina. Until September 1954 Southern operated three pairs of passenger trains on this line. (R. 359). One pair of trains was discontinued in 1954 and another pair in 1958. (R. 157). This reduced the passenger service to trains Nos. 13 and 16 which are involved in this proceeding. The principal public convenience presently afforded by these trains arises from the inter-connecting service at Greensboro with north-south trains on Southern's main line. The pullman service furnishes convenient overnight travel to New York and other East Coast cities, allowing a full working day to the traveler and thus conserving work time. (See the reference above to 30 places in the record).

The City of Durham has the largest natural interest in the use of the trains, 46% of the passengers embarking or leaving the trains there. This city has a population of 78,302. A witness for the railroad could recall only five cities in the United States with a population in excess of 70,000 that are without rail passenger service. The discontinuance of these trains would leave Durham County (1960 population 111,995), Alamance County (1960 population 85,674), and Orange County (1960 population 42,970) without any rail passenger service. These three counties with a total population of

240,639 are located in the industrial Piedmont section of North Carolina. (R. 522-523, 528-531).

Among the witnesses testifying were:

1. Four members of the U. S. Army assigned to the Office of Ordnance Research located at Duke University testified that the continuation of the trains was necessary for the satisfactory performance of their duties (relating to anti-missile missile work). Their individual annual use of the train was fifteen to twenty trips a year. (R. 488, 495, 501, and 507).

2. Two students at Duke University testified as to their and other students' use and need of the trains. (R. 215 and 216).

3. Professors from Duke University and the University of North Carolina testified as to the need of the trains in carrying on their duties. (R. 172, 179, 182, 213, 221, 542 and 551).

4. Patients at Duke Hospital testified as to the medical necessity of the trains in getting to and from their home in New York to the hospital. (R. 227 and 228).

5. A Research Chemist from Philadelphia, Pennsylvania, testified as to his use and need for the transportation. (R. 375).

6. A textile executive from New York City whose company owns a mill in Durham testified as to his necessity for the use of the trains. (R. 381).

7. The director of Transportation for Burlington Industries, Inc., Burlington, North Carolina, testified as to the need for the trains both for employees of the company and for buyers, suppliers and technical people visiting the plants of the company. (R. 469).

8. The President of the Research Triangle Institute, a recently established nonprofit organization providing research service to corporations, governmental agencies and foundations, testified as to the use and need of the trains by his staff, and that the continued operation of the trains was extremely important to the proper functions of his organization. The Institute staff consists of 86 full time members today; it is anticipated that this figure will be 170 by the end of 1962. (R. 478).

9. The President of the Golden Belk Manufacturing Company of Durham testified as to his use and need of the train. This witness explained the necessity for train travel in the operation of his business. (R. 521).

10. The President of the Burlington Chamber of Commerce testified that rail passenger service was instrumental in the growth of Burlington and that the discontinuance of trains would seriously handicap the area. (R. 531).

11. A Burlington Executive, the President of eight different corporations, testified as to the need for the trains by himself, his buyers, and his customers.

12. The Dean of Trinity College of Duke University, who made twenty to twenty-five trips a year himself, testified as to the need and convenience of the trains. (R. 542).

13. The Secretary of the Committee on Educational Institutions of the Duke Endowment testified that his work required use of these trains. (R. 548).

14. A Professor of Physics and a Member of the Advisory Committee of Reactor Safeguards, a part of the Atomic Energy Commission, testified that his work required the use of the trains at an average rate of a trip per month. (R. 551).

15. The President of Duke University testified to his use of the trains and that of his trustees and that their continuance was a matter of convenience and necessity. (He had made five trips to New York since the first of the year.) (R. 560).

16. The General Manager of the Jack Tar Hotel in Durham testified that the continued operations of the trains serve a necessary and convenient purpose for the guests who stay at his hotel and that the removal of the trains would not only be detrimental to efforts to attract conventions to Durham, but would inconvenience those persons attending such conventions. (R. 568).

17. The Director of Durham's Committee of 100 testified as to the need of the trains in locating and retaining industry in the Durham area. (R. 576).

18. The President of the Southerland Dye and Finishing Plant in Mebane, North Carolina, testified as to his use of the trains and their need in his area. (R. 585).

19. The Office Manager of the Belk Leggett Department Store in Durham testified as to his store's need of the trains for sending buyers to New York. The buyers consist of a group of four to six people going to New York once a month, ten months out of the year. (R. 591).

20. There was evidence of the need of the service in the industrial development of the area from Justin Kingston, a New York textile executive, now building a plant in Durham to employ two hundred to three hundred employees; (R. 381) from the Director of Transportation for Burlington Industries; (R. 469) from George Watts Hill, Chairman of the Board of the Home Security Life Insurance Company and of the Durham Bank and Trust Company, and numerous others. (R. 185). In addition, one witness, Dr. Thomas Powell, a man with an investment of a million dollars in the biological supply business in Elon, North Carolina, testified that the loss of rail

passenger service might cause that business to leave North Carolina. (R. 417).

21. Evidence indicated that there are three universities in or near Durham (two in Durham, one in Chapel Hill in Orange County). A total of 14,737 students attended these institutions in 1958-9 and attendance is steadily increasing. There are eight hospitals located in or near Durham. Six are within ten minutes by ambulance or auto from the Durham railroad passenger service. The other two, Butner and Memorial Hospital are within twenty to twenty-five minutes. These hospitals treated a total of over 431,000 patients in 1959. (R. 522-523, 528-531).

22. One witness testified that the operation of the trains was a necessity and convenience to her getting her teenage daughters to and from schools in northern cities and for the purpose of transporting young women and girls to and from Durham. (R. 167).

All of the evidence outlined above is positive and is based upon the personal knowledge and actual experience of the witnesses. It shows clearly that the continued use of these trains is a necessity and a matter of convenience to the public to reach hospitals and universities and to engage in government work and industrial growth. Appellees seriously contend that this evidence is in every respect substantial and that the Commission, in failing to give it the full consideration required by the substantial evidence rule, committed gross error in law. Its order was therefore, correctly set aside.

2 The record shows clearly that the over-all profit of Southern Railway in 1960 for its entire system was \$30,702,542 after the payment of all taxes and all operating expenses (R. 366) and its profits for 1959 was \$33,126,744. (R. 363). Of the 1960 profits, \$21,043,207 was paid in dividends to the stockholders of the corporation. (R. 366).

It is respectfully submitted that the argument of the

appellants fails on Southern's financial statement alone. Certainly no burden is placed upon interstate commerce when said Southern Railway has accumulated as of 1960 a surplus of \$343,594,070. (R. 366). The meager losses of the Greensboro-Goldsboro passenger service compared to the accumulated profit of the Southern Railway and to its annual earnings is inconsequential. Certainly it cannot be argued that the ability of the carrier to serve interstate commerce is substantially affected by such a small loss.

It is respectfully submitted that the court below not only has the right, but is charged with the duty, of determining whether or not substantial evidence was taken into account by the Interstate Commerce Commission in arriving at its order. The law has determined that consideration must be given to the whole record, *Universal Camera Corporation v. N.L.R.B.*, 340 U. S. 474 (1951).

The burdens of a public utility must be viewed in light of the principle that a public utility cannot shut off all unprofitable service—it must continue to serve, even at a loss as to some operations when the public convenience and necessity do not permit the loss of the service. Mr. Justice Frankfurter, in *Alabama Public Service Company v. Southern Railway Company*, 341 U. S. 341, 71 S. Ct. 762, 95 L. Ed. 1002 puts it:

“Unlike a department store or grocery store, a railroad cannot of its own free will discontinue a particular service to the public because an item of its business has become unprofitable. . . . One of the duties of a railroad doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided because it will be attended by some pecuniary loss.”

The use of the words "undue" and "unjust" must mean that there are permissible burdens, that is, "due" and "just" burdens. There is an interrelation between findings (a) and (b). To make a determination, the Commission must weigh the public convenience and necessity against the burdens. As the Court below pointed out "All material factors bearing on the questions must be taken into account, the Interstate Commerce Commission must consider a fair picture." *Colorado v. United States*, 271 U. S. 153, 168-169, 46 S. Ct. 452, 456, 70 L. Ed. 878, 885. The appellees respectfully submit that the Interstate Commerce Commission did not take all material factors into account and did not weigh the public convenience and necessity against the burdens.

CONCLUSION

The judgment of the Court below should be affirmed. The Interstate Commerce Commission did err in not interpreting and applying statutory standards. The appellant failed to show by substantial evidence, (1) that the present and future public convenience and necessity permitting of the discontinuance of the operation of the trains in question, and (2) that the continuance of said trains will work an unjust and undue burden upon the interstate operations of Southern or upon interstate commerce. The findings and conclusions of the Commission are not in accordance with law and are not supported by substantial evidence on the record considered as a whole.

Respectfully submitted,

THOMAS WADE BRUTON
 Attorney General of North Carolina
 CHARLES W. BARBEE, JR.
 Assistant Attorney General of
 North Carolina
 Justice Building
 Raleigh, North Carolina

E. C. BRYSON
114 Allen Building
Duke University
Durham, North Carolina

VICTOR S. BRYANT
F. GORDON BATTLE
111 Corcoran St.
Durham, North Carolina

A. H. GRAHAM, JR.
111 Corcoran St.
Durham, North Carolina

E. C. BROOKS, JR.
Trust Building
Durham, North Carolina

Attorneys for Appellees